



July 25, 2019

Mr. Ignacio Castejon  
Denver Great Hall, LLC  
24735 E. 75<sup>th</sup> Avenue, Suite 100  
Denver, CO 80249

**Re: Relief Event Claims 5, 6, 18, 7, 8, 9, 10, 11, 12, 13, 14, and 16**

Dear Mr. Castejon,

Transmitted herewith are the foregoing Relief Event Claims. Each of these Relief Event Claims have been properly noticed under Article 11.2, et seq., of the Development Agreement and have also been documented and discussed during the course of the project. Further, except for Relief Event Claim 16, all of the Relief Event Claims were identified on Exhibit 1 of the parties' Second Extension of Tolling Agreement and Mediation Agreement. Since these Relief Event Claims are submitted within ten (10) business days of the expiration of the Second Extension of Tolling Agreement and Mediation Agreement on July 15, 2019, these Claims are timely as expressly contemplated by the parties and the Tolling Agreement. Each Claim is also accompanied by the appropriate signature page and certification.

Each of these individual Relief Event Claims are inextricably intertwined and share a common nexus of facts. The overarching issue with each of these Relief Event Claims is the Owner's lack of engagement, direction, and cooperation when GHB receives an Owner-caused/directed change. Not only does the Owner continue to make substantial changes to the design at this late stage, but the Owner's failure to issue much needed direction and support regarding these Owner-caused changes plagues the Project.

Instead of having a fully defined Owner change to incorporate into the Project Schedule, the Owner is forcing GHB to incorporate an undefined Owner change directly into the Project Schedule. Specifically, the Owner often bypasses the Change Request procedure outlined in Appendix 12 to the Development Agreement and instead issues a change through the Change Directive mechanism. The Change Request procedure affords both parties ample time to discuss the proposed Owner-change and then develop a final design change *before* implementing this Owner change into the Project Schedule. This period of defining the Owner-caused change as outlined in the Change Request process is necessary to fully define the Owner's change and to mitigate the impact on the design and construction schedules.

However, rather than follow the Change Request process, the Owner has frequently skipped this process altogether and instead issued Owner changes directly through the Change Directive mechanism without having a defined change. By doing so, the Owner has foregone the time built into the Change Request process to fully define and understand the Owner's requested change *before* forcing GHB to implement it. By taking this action, the Owner has directed GHB to contractually proceed with implementing the proposed Owner changes with little more than a basic concept of the Owner's desired change. Thus, the



time required to fully define these Owner changes—which is taking an exorbitant amount of time in itself—is having a critical impact on the construction schedule and impacting numerous related activities.

The time it then takes the Owner to respond to GHB's repeated requests for clarification to define the Owner change is also having a significant impact on GHB. Often times the Owner does not even respond to GHB's requests for much needed direction or clarification. And in the limited times the Owner has responded, those responses are inadequate and have been issued weeks, if not months later. This delay (or complete failure to respond) is having a major impact on the Project Schedule's critical path.

The Owner's inability to provide timely direction impacts GHB's design timetable, its permitting process, and the project's construction schedule, driving GHB to incur additional, unanticipated costs. In contrast, GHB has acted at all times as a reasonably prudent design and construction contractor. GHB has been timely in providing the Owner with Notice of issues and weekly updates for each Claim. Conversely, the Owner has been extremely slow in responding, if not completely non-responsive. The Owner's refusal to engage in this process is making any proposed GHB mitigation efforts very difficult to achieve, which means that the problems just keep getting worse.

A significant and continuing issue remains the Owner's lack of decision making. GHB participated in innumerable meetings with the Owner and urged the Owner to make decisions about crucial problems that were impacting the Project. Owner representatives at the Project-level are simply not empowered to make even basic decisions. For example, all decisions concerning Change Directives or Executive Design Review elements require innumerable clarification meetings with the Owner's team, but participants in those meetings are keenly aware that their efforts are for naught. Decisions will only be made by or with the explicit approval of the CEO of the airport, who is rarely available to issue a decision. This indecision is dragging out an already laborious task; all the while it is impacting the Project Schedule because the Owner, once again, chose to skip the Change Request process and issue these changes as Change Directives.

Owner's refusal to engage in and manage the change process only compounds some of the major changes GHB has encountered. For example, GHB's discovery of the unanticipated weak concrete in the Terminal in the fall of 2018 (Relief Event Claim 6), although the most publicized problem GHB has encountered, is but only one issue discussed in these Claims. Immediately prior to GHB's discovery of the weak concrete, GHB had waited over 130 days for its Phase 1 structural construction permit (Relief Event Claim 5). Within a month of the discovery of the weak concrete, and despite protests from GHB that the Owner's Changes were negatively impacting GHB's ability to deliver the Project on time and on budget, the Owner issued a flurry of Change Directives that required, essentially, that nearly all of the design work GHB had performed between December 2017 and August 2018 be redone.

The timing and substance (or lack thereof) of the Owner's Change Directives, discussed more fully in Relief Event Claim 18, caused project-wide impacts for which little, if any, mitigation is available. There are presently 20 unresolved Change Directives for which GHB is seeking time and compensation.



# Great Hall Builders

GHB's Relief Event Claims cover all the currently known changes. By way of presentation, the Claims are presented in the order described above—5, 6, 18, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16—because the schedule impacts from Relief Event Claims 5, 6, and 18 control the critical path of the Great Hall Project. The remaining Claims currently have cost impacts, but are not yet on the critical path of the Project.

With respect to Relief Event Claim 11, the unapproved wayfinding EDR is close to impacting the critical path, as the scope remains undefined despite the 60% Design Development submittal being provided in April of 2018.

Concerning Relief Event Claim 12, this Claim, as has been discussed in detail with the Owner, may potentially impact the approval of deferred submittals by the Denver Fire Department.

GHB has proposed various options for mitigation for Relief Event Claim 13, but the proposed mitigation of the relocation of TSA is now becoming critical.

With respect to Relief Event Claim 16, the Notice for that Relief Event was issued on May 20, 2019. Accordingly, Relief Event Claim 16 was due on or before July 19, 2019. Because GHB believed efforts could be made this week to further potential amicable resolution of all of these related Claims, Relief Event Claim 16 was not submitted on July 19, 2019. Instead, and as permitted by Article 11.2.5 of the Development Agreement, Relief Event Claim 16 is also hereby submitted as of the date of this correspondence.

Please contact me at your earliest convenience at (972) 623-7758 or by email at [iperez@ferrovial.us](mailto:iperez@ferrovial.us) if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "IPerez".

Ignacio Perez Jainaga

CEO

Great Hall Builders, LLC

## **RELIEF EVENT #18 – OWNER CHANGES**

*(Section 11.2.10.2 of the Agreement)*

	<b>CITY AND COUNTY OF DENVER DEPARTMENT OF AVIATION DENVER INTERNATIONAL AIRPORT</b>	<b>Date of Claim:</b> July 25, 2019 <b>Contract No.:</b> 201735867 <b>Contract Title:</b> Development Agreement for Great Hall Project <b>Developer:</b> Denver Great Hall LLC <b>Relief Event Claim No.</b> 18
---	--	---

Reference is made to the Development Agreement, dated as of August 24, 2017 (as amended, the “**Agreement**”)<sup>1</sup> between the City and County of Denver, through and on behalf of its Department of Aviation (the “**Owner**”) and Denver Great Hall LLC (“**Developer**”).<sup>2</sup> Capitalized terms defined in the Agreement and not otherwise defined herein are used herein as defined in the Agreement.

Pursuant to Section 11.2 of the Agreement,<sup>3</sup> Developer hereby requests relief from the Owner as articulated herein with the following information as set forth below or attached hereto (which attachments are hereby incorporated in full and form a comprehensive part of this Relief Event Claim), including, without limitation, information provided by Ferrovial Agroman West, LLC (“FA West”) as Lead Contractor and Lead Designer, per Appendix 3-H of the Agreement,<sup>4</sup> and Great Hall Builders LLC (“GHB”) as a Key Contractor, per Appendix 3-H of the Agreement.

Developer maintains that the Change Directives discussed herein are ripe for resolution and can be submitted to the Dispute Resolution Panel. Regardless, and in light of the parties’ Second Extension of Tolling Agreement and Mediation Agreement, and without waiving the right to seek redress of these Change Directives through the procedures set forth in the Agreement’s Appendix 12, Developer is alternatively and simultaneously submitting the same Change Directive information for resolution under Article 11 as a Relief Event.

### **(a) The specific monetary compensation, time extension and/or other relief sought;**

Please see Attachment 3, Report of FTI Consulting, Inc. (Schedule Analysis) and Attachments 4 and 4a, Reports of Veritas Advisory Group, Inc. (Cost Analysis).

Set forth below is the specific monetary compensation (presented as nominal figures), time extension and/or other relief sought due to the Owner Changes Compensation Event based on cumulative schedule relief as a result of the Delayed Governmental Approvals Relief Event, the Unknown Structural

<sup>1</sup> Please see Attachment 1, Volume I of Development Agreement.

<sup>2</sup> Developer, as used in this Claim, encompasses Denver Great Hall, LLC, Ferrovial Agroman West, LLC, and Great Hall Builders, LLC.

<sup>3</sup> Id. at pg. 73-77.

<sup>4</sup> Please see Attachment 2, Appendix 3-H of the Agreement, Key Contractors and Key Personnel.

Conditions Compensation Event, and this Owner Changes Compensation Event and monetary relief as a result of the Unknown Structural Conditions Compensation Event, and this Owner Changes Compensation Event.

### **Owner Changes Compensation Event**

\$	Loss of Revenue	Base Direct Costs		Mark-up		<b>Total</b>
		Qualifying	Excluded	Contractor	Developer	
Direct Costs – Contractor*		65,409,324	40,180,772	7,849,119	1,962,280	<b>115,401,495</b>
Direct Costs - Developer		10,064,342	9,477,514		1,207,721	<b>20,749,577</b>
Loss of Revenues	30,520,445					<b>30,520,445</b>
<b>Total</b>	<b>30,520,445</b>	<b>75,473,667</b>	<b>49,658,286</b>	<b>7,849,119</b>	<b>3,170,001</b>	<b>166,671,517</b>

\**Direct Costs – Contractor excluding Developer's Markup total: \$113,439,215.*

### **Unknown Structural Conditions Compensation Event, and Owner Changes Compensation Event**

\$	Loss of Revenue	Base Direct Costs		Mark-up		<b>Total</b>
		Qualifying	Excluded	Contractor	Developer	
Direct Costs – Contractor*		82,398,520	99,125,973	9,887,822	2,471,956	<b>193,884,272</b>
Direct Costs - Developer		14,085,151	15,793,375		1,690,218	<b>31,568,744</b>
Loss of Revenues	62,637,345					<b>62,637,345</b>
<b>Total</b>	<b>62,637,345</b>	<b>96,483,671</b>	<b>114,919,348</b>	<b>9,887,822</b>	<b>4,162,174</b>	<b>288,090,361</b>

\**Direct Costs – Contractor excluding Developer's Markup total: \$191,412,316.*

As addressed in FTI's Report, Owner's changes directly impacted the Project's critical path. If the requested relief is altered in respect of time extensions requested for the items impacting the critical path, it will likely lead to items for which Developer is not currently claiming a time entitlement converting to items for which Developer may seek an entitlement. Further, some of the Change Directives that are not on the critical path, but still delayed, have an impact on the Project's overall float and may impact the Project's float.

- (b) Full details of the Relief Event, including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased or estimated duration to the extent that the Relief Event and the effects thereof have not ceased) and the portions of the Work affected;**

This Relief Event Claim, after the introduction immediately below, will first discuss the overall design and construction impacts that the Project has suffered as a result of the Owner's Change Directives. This overview is intended not only as support for the requested compensable time extension attributable to this Relief Event, but also as a lens through which the subsequent portion of this Relief Event Claim is meant to be viewed. Following the presentation of the overall design and construction impact explanation, this Relief Event Claim will address each of the twenty (20) unresolved Change Directives individually, including their individual history and requested compensation.

## **I. Introduction.**

At its heart, this Relief Event seeks compensation and additional time to address the impact of the Owner's untimely and ill-defined Change Directives. As discussed in detail below, many of these claimed Change Directives were issued by the Owner in the midst of performing the design work (sometimes after Issued for Construction drawings packages were issued and construction permits had been obtained) and, in some respects, during construction. As discussed in Attachment 3 hereto, Report of FTI Consulting, Inc., the timing of these Change Directives impacted the entire schedule (both design and construction activities).

More important than their timing was the fact that the Owner issued these Change Directives with no definite understanding of the requested scope of changed work. For example, the Change Directives mandated Developer to proceed with nothing more than a scope of work that was conceptual in nature. In many instances, the Owner forced the Developer to proceed with incorporating the Change Directives into its schedule and its plan with either no defined scope of work, or an ill-defined scope of work. Handling changes in this manner introduced unnecessary confusion into the design process and ongoing construction activities.

A clear example of the above is Change Directive 9 – TSA Screening Area, where the changes requested by the Owner were not completely defined and clear. A proposal for a schedule of follow-up meetings was submitted by the Developer, in a proactive manner, with the intention of developing the construction documents for the TSA Screening Area during such meetings. The Developer set these meetings as further scope definition was required from the Owner and they were scheduled every two weeks with a specific agenda of items to be discussed in each meeting and the process to close the design.

Compounding this problem, when Developer attempted to define what it was precisely the Owner wanted in these Change Directives, the Owner's responses were either untimely or simply non-responsive. Rather than having an independent construction manager or design team assisting the Owner through this change management process, the Owner had a small team of in-house personnel with no additional resources and who had extremely limited authority to make binding decisions for the Owner. When the

Owner would finally carve out time to meet with Developer to help it understand the requested scope of work, the Owner's representatives would equivocate and then ultimately state that only the CEO for the Owner could make these important decisions. When Developer would finally have meetings with the CEO, new alternatives were often requested and new directions were often received, resulting in meetings that did not culminate with decisions being made by the Owner. This arduous and confusing process was time consuming and resulted in significant and unnecessary bottlenecks to the Project.

A clear example of the above were Change Directive 5 – DEN Restroom Design Revisions and Change Directive 21 - DEN Restroom Upgrades to Change Directive #05. Change Directive 21 was issued in December 2018, and apart from the fact that it was required to be issued to complete the unresolved items from Change Directive 5, it also reopened parts of Change Directive 5 issued in February 2018 (which had been closed through Change Order 11). Owner re-opened previous agreements (selected sinks to a continuous solid surface trough sink configuration), requested more options to two elements, expressed their preference “to return to terrazzo or solid surface” and opened the discussion to new elements (push button automatic opener for family restrooms, alternative flooring under urinals, the latter being abandoned on a later stage).

While changing the design is not in itself inherently bad, how and when these changes are issued and managed can be debilitating to a Project of this size and complexity. Had the Owner put more foresight into the design it ultimately wanted or if the Owner had been actively engaged in the change process, the impacts from the Change Directives may have been different.<sup>5</sup> Instead, Developer had to contend with an Owner that was non-responsive and gave very little direction for these Change Directives. Below is a chart showing all the correspondence Developer sent to the Owner seeking much needed direction concerning these Change Directives.

---

<sup>5</sup> Going forward, should the Owner wish to make additional changes, Developer urges the Owner to have a fully formed scope of work associated with the respective change before directing Developer to proceed with implementing that change.

**REDACTED**

The impact of the Owner's lack of engagement contributed to the delayed design. As illustrated below, Developer had to be proactive and alert the Owner that its desire to change the design was, in fact, an Owner Change. Rather than responding promptly to the Developer's request for direction or clarification, the Owner would often times wait weeks or months before responding. And when the Owner did respond, it was not to provide additional information or provide a Change Request, the Owner would instead issue a Change Directive with very limited direction and information. Below is a graphic for each Change Directive discussed herein showing the relevant dates from the time Developer sought direction on a potential change, to the Owner's unilateral issuance of a Change Directive:

**REDACTED**

To fully understand the importance of the Owner's actions, it is important to first understand the nature of the parties' agreed-to change process.

The Agreement's Appendix 12<sup>6</sup> spells out the procedures for Owner Changes. Generally, if the Owner wanted to change the scope of work, it would first issue a Change Request with a defined scope of the changed work. This Change Request, according to Appendix 12, would inform the Developer of the nature of the change the Owner wanted. At that time, the Developer could then issue a Preliminary Change Estimate ("PCE"), providing a description of the changed scope of work, its expected cost, and expected time to complete. Within 15 business days, the Owner would then provide an evaluation of the Developer's PCE. This process was not intended to drag out for weeks or months. While this contained process was ongoing, the Developer would continue to proceed with the original scope of work and original design with no interruptions.

According to Appendix 12, if and when the parties agreed to the cost and time of this Change Request, the Owner would issue a Change Order and direct the Developer to proceed with the defined and agreed-to scope of work, at the additional cost and time extension (if any).<sup>7</sup> At that time, the Developer would then incorporate this fully defined change scope of work into its schedule. While still an impact, the Developer would be able to limit the Change Order's disruption to the plan and schedule.

If the parties could not agree on the cost or time impacts of the Owner's defined scope of work, the Owner would then issue a Change Directive directing the Developer to proceed with the defined scope of work.<sup>8</sup> Developer would have to track its actual costs, submit its costs, and the parties would reserve the right to dispute any unpaid actual costs not reimbursed by the Owner for the changed work.

As noted above and discussed in detail below, the Owner short-circuited this process by not issuing a Change Request with a defined scope of work. Instead, the Owner has issued Change Directives with only conceptual ideas of the changed work. All of the Owner's Changes discussed herein were issued as

---

<sup>6</sup> Please see Attachment 6, Appendix 12 of the Agreement, Owner Change Procedure.

<sup>7</sup> Id.

<sup>8</sup> Id.

Change Directives instead of Change Requests, which denies the parties the ability to fully detail and come to agreement on the scope of work before forcing the Developer to incorporate the changed scope into the schedule and work.

By way of background, in August 2018, and response to the Owner's first eight (8) Change Directives, the Developer and the Owner reached a Combined Phase 1 IFC Submission mitigation agreement.<sup>9</sup> This Combined Phase 1 IFC Submission mitigation agreement was an effort to mitigate against the delays being caused by the Owner and was for all disciplines except structural;<sup>10</sup> eliminated the 90% Phase 1 design submission; combined the Phase 1 IFR and IFC submissions into a single Combined Phase 1 IFC Submission to be delivered by the Developer on August 15, 2018; and logically unlinked the completion of the AOB/North Terminal with the start of Phase 3 of the Project.<sup>11</sup>

Below is the chart that was attached to the Combined Phase 1 IFC Submission mitigation agreement between Owner and Developer, showing the agreed upon process.

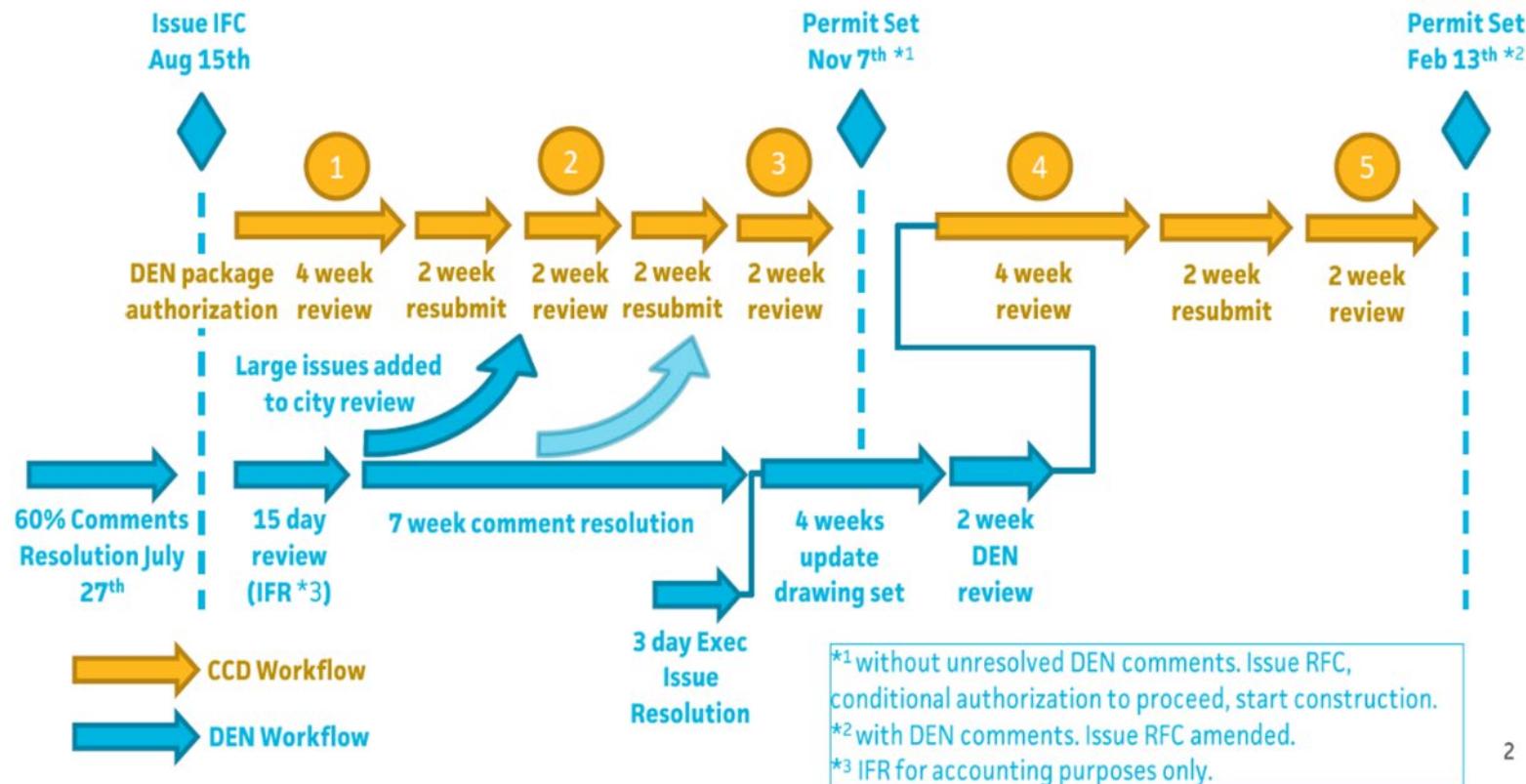
---

<sup>9</sup> Please see Attachment 12, Combined Phase 1 IFC Submission mitigation agreement. The Project consists of three (3) aspects, the Central Monitoring Facility ("CMF"), the Administrative Office Building ("AOB"), and the renovation of the main Terminal. The CMF is a 4,000 square foot space that was supposed to be designed over the course of 8 weeks, and then relocated from one floor to another. Due to interference by the Owner, design of the CMF took 8 months. The parties settled the Relief Event Claim related to the CMF in the summer of 2018. The AOB is sometimes also referred to as the North Terminal, and is located at the north end of the Terminal, furthest from the Westin Hotel and alongside the current TSA entry point and bridge to Concourse A. The largest part of the Project is the Terminal renovation. This aspect of the Project is to be delivered in four (4) Phases, with each Phase not starting until the predecessor Phase is completed. Phase 1 concerns the design and construction of the middle third of the Great Hall on Levels 5 and 6. This middle third is referred to as Mod 2. Phase 2 concerns the design and construction of the southern third of the Terminal, nearest to the Westin Hotel, on Levels 5 and 6. This southern third is referred to as Mod 3. Phase 3 concerns the design and construction of the northern third of the Terminal, nearest to the AOB/North Terminal, on Levels 5 and 6. This northern third is referred to as Mod 1. Phase 4 of the Project concerns design and construction across Mods 1-3 and on Levels 5 and 6.

<sup>10</sup> The structural issued for review package had been delivered on May 7, 2018, and the structural issued for construction package had been delivered on June 13, 2019.

<sup>11</sup> The AOB/North Terminal and was originally to be designed and constructed in parallel with Phases 1 and 2 of the Project. The Combined Phase 1 IFC Submission agreement pushed the completion of the AOB/North Terminal from the end of Phase 2 to the end of the Project. The result of this attempted mitigation is that there is now more work to be performed at the end of the Project when there is, arguably, more difficult work in the Terminal to be performed. The mitigation, in effect, backloads the work.

## Delete 90%, Combine IFR / IFC – CCD and DEN Comment Overlap



As shown above, the Combined Phase 1 Submission mitigation agreement was premised upon a revised Combined Phase 1 IFC resubmittal to the City and County of Denver Building Department (“City”) for permitting no later than 6 weeks from issuance of the August 15 Combined Phase 1 IFC Submission (September 26, 2018). This September 26 submission was to include the most pressing Owner comments that could impact the City’s review of the package. The Combined Phase 1 IFC Submission mitigation agreement was also premised upon the City issuing the Phase 1 construction permit no later than November 7, 2018. Thereafter, any of the Owner comments from October 2018 that were not able to be incorporated into the November Phase 1 construction permit would be resubmitted to the City and re-reviewed in accordance to the foregoing diagram, with the premise that an amended permit would be issued no later than February 13, 2019.

As planned, the City issued the permit for Phase 1 construction on November 8, 2018. However, after the City issued the Phase 1 construction permit on November 8, 2019, the Owner began issuing even more Change Directives,<sup>12</sup> which impeded the Developer’s ability to adhere to the agreed upon mitigation plan set forth in the Combined Phase 1 IFC Submission mitigation agreement.

In fact, the number of Change Directives issued by the Owner from the time of the Combined Phase 1 IFC Submission in August 2018 (9 in total) to today has more than tripled (28).<sup>13</sup> But it is not only the volume of changes issued by the Owner that has wreaked havoc on the Developer’s ability to manage the work and design, but the sheer volume of work added by the Owner through these numerous Change Directives; in addition to the ill-defined, ever-evolving nature of the Change Directives.

The lack of definition in the Change Directives and the Owner’s general indifference toward the change process had a direct cost impact on Developer’s design team, requiring more effort and extending the amount of time dedicated to the Project than originally planned. These Change Directives impacted multiple design disciplines and across multiple design packages. As a direct result of the ill-defined Change

---

<sup>12</sup> Please see Attachment 6, Appendix 12 of Development Agreement, Owner Change Procedure.

<sup>13</sup> Although the Change Directives are numbered through Change Directive 29, Change Directive 1 was not used. Therefore, the number of Change Directives used is one less than the actual numbering.

Directives, Developer has been forced to keep its design consultants, incurring additional, extended costs to make not only the changes associated directly with the specific Change Directive, but also to incorporate those into the overall Project design. Below is a graph showing the direct relationship between the number of Change Directives and the additional design costs from Developer's design team:

**REDACTED**

The result of the rapid succession of Change Directives post-receipt of the construction permit for Phase 1 of the Project in November 2018 and volume of added work is that the Developer was not able to incorporate all of the owner-directed changes into its design in sufficient time to obtain the updated Phase 1 construction permit in February 2019, as shown in the Combined Phase 1 IFC Submission mitigation agreement. Quite the contrary, the Developer was not able to submit for an updated permit with the City until June 4, 2019. This, in turn, means that Developer has not been able to progress certain works, including mechanical, electrical, and plumbing (“MEP”) while it waits for the updated permit to be issued.

Below is a graph showing the Combined Phase 1 IFC Submittal in August 2018, and the Phase 1 Modified Drawings package submitted in June 2019 (10 months extension for Phase 1). The graph also shows (in blue) the periods of time where the Developer worked on the Change Directives.

**REDACTED**

The Change Directives issued by the Owner post-permit receipt not only require a new Phase 1 construction permit but also require significant modifications to the design packages that were being prepared in late 2018 for the subsequent Phases of the Project.

Developer has provided the requisite PCEs for each of the Change Directives at issue in this Relief Event Claim.

This Owner Change Relief Event also shows how the timing and substance of the Change Directives caused project-wide disruption, resulting in increased Direct Costs as well as a compensable schedule extension.

As explained by FTI in Attachment 3 hereto:

[Developer] has shown through the early design process that it did and could have completed its scope of work in accordance with the Baseline Schedule but for the DEN changes. DEN made numerous changes through the Change Directive process that interfered with and delayed [Developer's] design development process. DEN's failure to make decisions regarding certain aspects of the not fully defined design changes and execute contract Change Orders has further exacerbated the time impact caused by Change Directives. [Developer's] design schedule has been significantly delayed, which has in turn delayed [Developer's] construction activities and the projected completion date of the project.<sup>14</sup>

## **II. Overall Design and Construction Impacts of Owner Changes.**

The original design program for the Project was sequential by Phases and consistent with Technical Requirements – Volume II of the Development Agreement – Section I.8.3.3 therein.<sup>15</sup> This approach was necessary in order to achieve the deadlines set forth in the Baseline Project Schedule (which is attached as Appendix 3-A to the Development Agreement).<sup>16</sup> The original design program consisted of:

- Early Design Work (multiple packages)
- Schematic Design Package - 30% (all Functional Areas submitted as one coordinated set)
- Design Development Package - 60% (all Functional Areas submitted as one coordinated set)

---

<sup>14</sup> Please see Attachment 3 at pg. 9 of 122. Please also see Attachment 3 at pp. 36 – 46.

<sup>15</sup> Please see Attachment 53, Volume II of Development Agreement, Technical Requirements, at pp. 29-33.

<sup>16</sup> Please see Attachment 54, Appendix 3-A of Development Agreement, Baseline Project Schedule.

- All Construction Documents – 90% Progress Submittals: number and name of packages based on Developer packaging schedule (multiple packages)
- All Construction Documents - Issued for Review - 100% (IFR) Submittal
- All Construction Documents -Issued for Construction (IFC) Submittal

**a. The Early Design Work.**

The Early Design Work, including the CMF was performed by the Developer at the same time as the 30% Schematic Design Package Submittal and is not at issue in this Dispute.

**b. The 30% Schematic Design Package.**

The Developer delivered the 30% Schematic Design Package to the Owner for the entire Project on December 21, 2017.<sup>17</sup> On January 16, 2018, the Developer received 1,541 comments from the Owner to the 30% Schematic Design for the entire Project.<sup>18</sup> The Owner also attempted to reject the 30% Schematic Design Package, even though this package is what is known as a Type 2 Submittal, meaning (as set forth in the Development Agreement) that Owner approval of this package is not required.

The Developer participated in eight (8) comment resolution meetings with the Owner in the first quarter of 2018 concerning the 30% Schematic Design Package, even though the terms of the Development Agreement contemplate a single comment resolution meeting and then elevation of any outstanding comments to executive leadership for Developer and Owner, per Section I. 8.3.3.7 of the Technical Requirements.<sup>19</sup>

**c. The 60% Design Development Package.**

In the first two (2) quarters of 2018, the Developer was advancing the 60% Design Development Package for the entire Project. The Owner was required to approve 22 Executive Design Review elements/areas (“EDRs”) – as set forth in Section I.8.3.2 of the Technical Requirements (Volume II of the Development Agreement) – before the submission of the 60% Design Development Package for the entire Project (April 2018).<sup>20</sup>

---

<sup>17</sup> Please see Attachment 55, 30% Schematic Design delivery confirmation.

<sup>18</sup> Please see Attachment 56, Owner comments to 30% Schematic Design.

<sup>19</sup> Please see Attachment 53 at pg. 33.

<sup>20</sup> Id. at pp. 27 – 29.

During this same time in 2018, the Owner began issuing Change Directives. The terms of Appendix 12 of the Agreement require the Developer to “proceed with implementing the Owner Change” after receipt of the Change Directive. This is in contrast to a Change Request, which is not required to be implemented by the Developer unless and until there is agreement on the scope and impact of the Owner’s proposed change.<sup>21</sup>

Change Directive 2, Airlines Layout, was issued on February 23, 2018.<sup>22</sup> This Change Directive affects Phases 1, 2, 3, and the AOB. It was approved via Change Order 3 on August 3, 2018 (116 days after issuance).

Change Directive 3, Anti-backtrack doors, was also issued on February 23, 2018.<sup>23</sup> This Change Directive affects Phase 3 and the AOB. It was approved via Change Order 6 on November 14, 2018 (189 days after issuance).

Change Directive 4, DEN Terminal Building Management System for Concessions HVAC, was issued on February 27, 2018.<sup>24</sup> This Change Directive affects all Phases of the Project. It was approved via Change Order 2 on August 3, 2018 (114 days after issuance).

Change Directive 5, Restrooms, was issued on March 9, 2018.<sup>25</sup> This Change Directive affects all Phases of the Project.

Change Directive 6, GHP Concessions Office Relocation, was issued on March 28, 2018.<sup>26</sup> This Change Directive affects the AOB.

Change Directive 8, Revised Technical Specification 087100 – Door Hardware, was issued on March 28, 2018.<sup>27</sup> This Change Directive affects all Phases of the Project.

---

<sup>21</sup> Please see Attachment 6.

<sup>22</sup> Please see Attachment 58, Change Directive 2.

<sup>23</sup> Please see Attachment 59, Change Directive 3.

<sup>24</sup> Please see Attachment 60, Change Directive 4.

<sup>25</sup> Please see Attachment 61, Change Directive 5.

<sup>26</sup> Please see Attachment 62, Change Directive 6.

<sup>27</sup> Please see Attachment 63, Change Directive 8. The Change Directives were issued out of order. Change Directive 7 was not issued sequentially by the Owner between Change Directive 6 and 8. Instead, Change Directive 7 was issued in May 2018.

In recognition by the Owner that the newly issued Change Directives impacted Developer's ability to submit the 60% Design Development Package as planned, a waiver was executed acknowledging that the 60% Design Development Package in April 2018 would be submitted with certain areas or items "hatched" or otherwise excluded from that design package.<sup>28</sup>

The Owner provided over 2,000 comments to the 60% Design Development Package and Owner attempted to 'reject in-part' the submission.<sup>29</sup> Same as for the 30% Schematic Design Package, which the Owner improperly attempted to "reject," the 60% Design Development Package was also a Type 2 Submittal for which Owner approval is not required. These excessive and unfiltered comments and attempted "rejections" of Developer's design packages were, therefore, not a product of the quality of the design but were, instead, the result of the Owner not fully comprehending the terms of the Agreement.

Developer performed an analysis to determine the nature of the Owner comments and concluded that the 60% Design Development Package was fully compliant with the contractual requirements and that approximately 30% of the Owner comments were not valid.<sup>30</sup> Comments to the 60% Design Development Package include comments: belonging to outstanding Change Directives issued by the Owner (8%), future submittals (6%), opinions, notes or confusing language (8%), related to construction instead of design (3%), or were not part of the Developer's scope of work for the Project (2%).<sup>31</sup>

The Developer participated in nine (9) comment resolution meetings with the Owner concerning the 60% Design Development Package even though the terms of the Development Agreement contemplate, same as for the 30% Schematic Design, a single comment resolution meeting and then elevation of any outstanding comments to executive leadership.

---

<sup>28</sup> Please see Attachment 64, 60% Design Development waiver. This waiver also took into account that the Owner had not fulfilled its obligations with respect to the Executive Design Review elements. The Owner Caused Delays and material failures by the Owner with respect to the EDRs are discussed to a certain extent within this Relief Event Claim, as some EDRs were transformed into Change Directives by the Owner. Additional detail concerning the Owner's failures with respect to the EDRs is discussed in Relief Event Claim 11.

<sup>29</sup> Please see Attachment 65, Owner comments to 60% Design Development submission.

<sup>30</sup> Please see Attachment 66, GHB correspondence re quality of 60% design comments.

<sup>31</sup> Please see Attachment 66.

**d. The Combined Phase 1 IFC Submission.**

The Combined Phase 1 IFC Submission mitigation agreement was reached in August 2018 to mitigate against delays that were beginning to be experienced on the Project due to Change Directives.<sup>32</sup> At the time of the Combined Phase 1 IFC Submission mitigation agreement, the Owner had issued nine (9) Change Directives. In addition to Change Directives 2-8 (not including 7), discussed above and which were issued prior to the 60% Design Development Package in April 2018 (and the necessary waiver therefor), in May the Owner issued three (3) more Change Directives. Change Directive 7, Level 6 AOB Corridor Program Revisions, was issued on May 7, 2018.<sup>33</sup> This Change Directive affects the AOB Corridor. Change Directive 9, TSA Screening Area, was issued on May 22, 2018.<sup>34</sup> This Change Directive affects Phase 3 of the Project. Change Directive 10, Add Oversize (OS) Baggage Lifts and Airline Pod Restrooms, was issued on May 11, 2018.<sup>35</sup> This Change Directive affects Phase 1 of the Project.

To reiterate, the graphic below that was attached to the Combined Phase 1 IFC Submission mitigation agreement shows that that agreement was premised upon a revised Combined Phase 1 IFC resubmittal to the City for permitting no later than 6 weeks from issuance of the August 15 Combined Phase 1 IFC Submission (September 26, 2018). This September 26 submission was to include the most pressing Owner comments that could impact the City's review of the package. The Combined Phase 1 IFC Submission agreement was also premised upon the City issuing the Phase 1 construction permit no later than November 7, 2018. Thereafter, any of the Owner comments from October 2018 that were not able to be incorporated into the November Phase 1 construction permit would be resubmitted to the City and re-reviewed in accordance to the following diagram, with the premise that an amended permit would be issued no later than February 13, 2019.

---

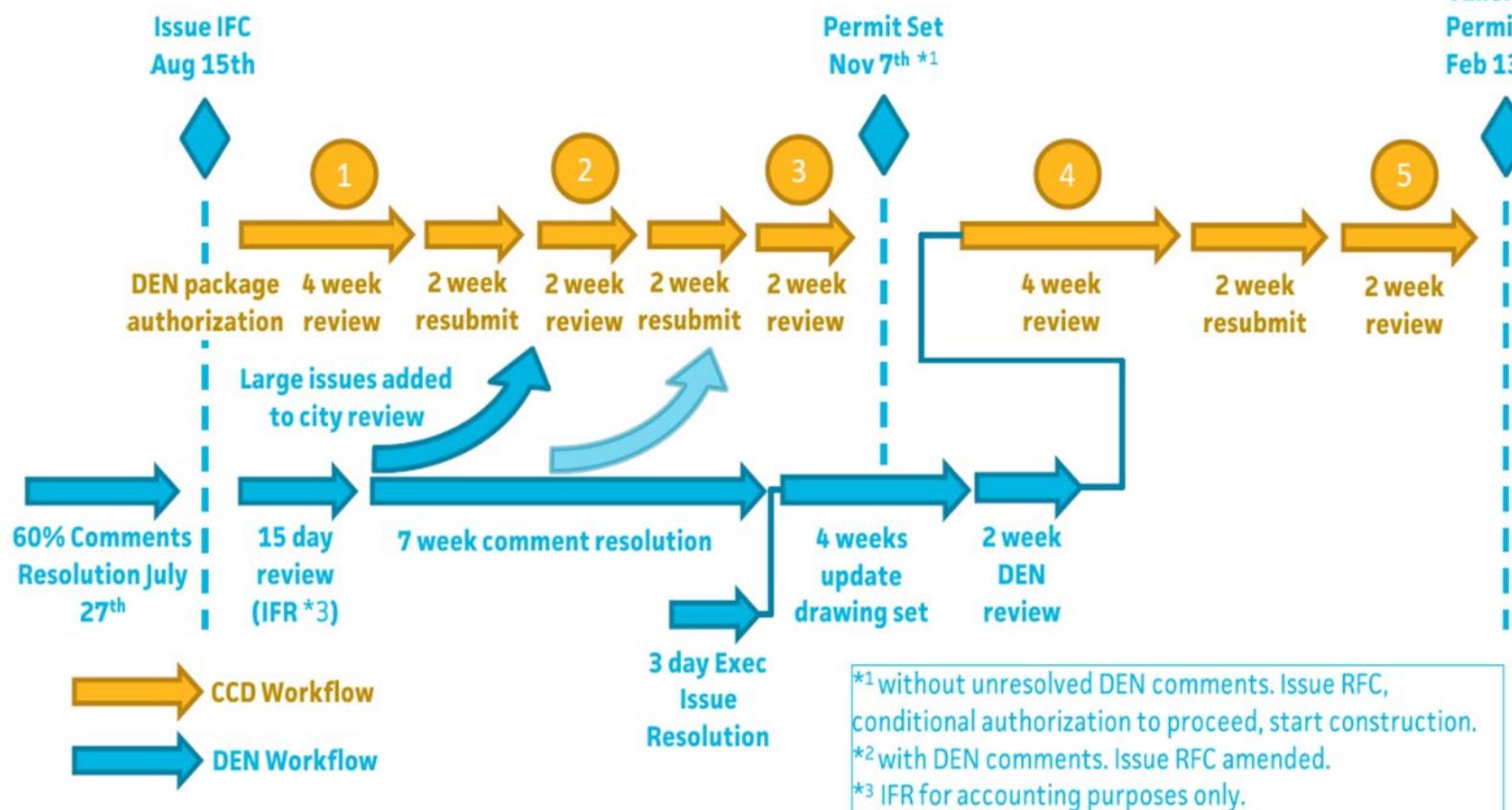
<sup>32</sup> This is underscored by the fact that Developer had provided a Relief Event Notice in May 2018 for the first set of Change Directives issued by the Owner. On August 3, 2018, this Notice was withdrawn, but as Attachment 66A shows, that withdrawal was directly tied to the need for the Combined Phase 1 IFC Submission mitigation agreement.

<sup>33</sup> Please see Attachment 67, Change Directive 7.

<sup>34</sup> Please see Attachment 68, Change Directive 9.

<sup>35</sup> Please see Attachment 69, Change Directive 10.

## Delete 90%, Combine IFR / IFC – CCD and DEN Comment Overlap



As is commonplace, once the Phase 1 construction permit was received, the Developer would then have to prepare shop drawings, finalize the procurement, and complete the fabrication and delivery in order to start construction of Phase 1 architecture and mechanical/electrical/plumbing (“MEP”) works by January 11, 2019.

The Owner provided its high priority comments to the Combined Phase 1 Submission on September 7, 2018.<sup>36</sup> After the Owner provided its comments, the Owner issued Change Directive 13, Delete Terminal Hydronic Pumps Scope, on September 10, 2018.<sup>37</sup>

Developer became aware that Owner intended to issue even more Change Directives, and Developer was concerned that the timing and substance of those proposed Change Directives might derail the mitigation effects intended by the Combined Phase 1 IFC Submission mitigation Agreement. Therefore, on October 2, 2018, Developer provided correspondence<sup>38</sup> to the Owner detailing how the Owner’s issuance of Change Directives was affecting the Project. That correspondence provided, in part:

Previously, the significance of the Change Directives issued by the Owner at critical project times force [Developer] to issue a preliminary Relief Event Notice concerning Change Directives 2, 4, 5, 6, and 7. Since that time, [Developer] and Owner have agreed to a mitigation plan that permitted [Developer] to issue a Phase 1 Combined Submission for all disciplines except structural on August 15, 2018 [...] The first eight (8) Change Directives issued by the Owner have also consumed [Developer’s] float on the Project, thereby placing many activities on or near the critical path [...] In short, [Developer] has already attempted to mitigate against the effects of the Owner Changes to-date as best it can, and there is no longer a mitigation plan that will allow [Developer] to deliver its Work on time or on budget given the level of Owner Changes that are occurring [...]

The design and construction aspect of the Project was bid and priced to be delivered as a lump sum design-build. The first eight (8) Change Directives have already altered the risk profile and allocation associated with the pricing and delivery of a project in the manner that this one was bid and awarded [...]

For Change Directive 10, the Owner verbally or unofficially stated that certain work originally identified in the Change Directive will actually be removed from the Change Directive. This unofficial directive was issued weeks ago, and [Developer] has yet to receive any official modification of the Change Directive. It is undisputed that this Change Directive would have significant impacts on the Phase 1 Combined Submission from August 15, 2018, and in the construction schedule for Phase 1. As such, [Developer] is forced into the untenable position of designing and proceeding in accordance with the

---

<sup>36</sup> Please see Attachment 70, Owner comments to Combined Phase 1 IFC Submission.

<sup>37</sup> Please see Attachment 71, Change Directive 13. Once again, the Change Directives were issued out of order. So, Change Directive 13 came after Change Directive 10 but preceded Change Directives 10-12, which were issued in October.

<sup>38</sup> Please see Attachment 72, October 2, 2018, correspondence to Owner regarding impact of Change Directives. This correspondence was subsequently “withdrawn,” but the Owner had already been provided notice of the issues stated therein. So, the withdrawal was really of no import.

original Change Directive all the while anticipating another Owner Change to its own Change Directive [...]

[Developer] has also been verbally and unofficially informed that a revised, corrected, and official version of the proposed Change Directive 12 is forthcoming. Again, weeks have gone by without further direction from the Owner [...]

[Developer] understands the need to accommodate some client changes, but the current trend is no longer sustainable. These changes affect substantial areas of the Terminal, as it is shown on the attached drawings, making the design and construction progress highly inefficient and contrary to what was planned to be executed.

The next day, on October 3, 2018, the Owner issued four (4) more Change Directives.

Change Directive 10Rev1, Stop Work on the Oversize (OS) Baggage Lifts and Add Airline Pod Restrooms, was issued and affects Phase 1.<sup>39</sup> Change Directive 11, AGTS Airside Exit was issued and affects Phase 2 and 4 of the Project.<sup>40</sup> Change Directive 12, Owner to Modify Out of Scope Baggage Lift, was issued and affects Phase 1.<sup>41</sup> Change Directive 14 was issued, Complete Design of CCTV System Phases 2-4, was issued and affects Phases 2, 3, and 4 of the Project.<sup>42</sup>

Comment resolution meetings between the Owner and Developer were then held until October 8, 2018, for the Combined Phase 1 IFC Submission. The contemplated Phase 1 resubmittal was then provided to the City on October 19, 2018 instead of the September 26, 2018 original date, due to the fact that comment resolution meetings took place until October 8, 2018.

In October 2018, and after the Developer provided the Combined Phase 1 IFC resubmittal to the City, Developer continued to try to incorporate the rest of the Owner's lower priority comments, with an eye towards the agreed upon amended Phase 1 construction permit by February 7, 2019.

Despite Developer's warnings against continued issuance of Change Directives at this critical time in the evolution of the design for the Project, on November 3, 2018, while Developer was working on the rest of the comments not included in the revised Combined Phase 1 IFC resubmittal, the Owner issued Change Directive 15, which affected the architectural partitions in the Level 5 Baggage Claim area for

---

<sup>39</sup> Please see Attachment 73, Change Directive 10 Rev1.

<sup>40</sup> Please see Attachment 74, Change Directive 11.

<sup>41</sup> Please see Attachment 75, Change Directive 12.

<sup>42</sup> Please see Attachment 76, Change Directive 14.

Phases 1, 2, and 3.<sup>43</sup> Because the Change Directive was not fully defined at the time it was issued, Developer began having design meetings with the Owner to define the scope of Change Directive 15.

As planned, the City issued the permit for the Combined Phase 1 IFC Submission on November 8, 2018.

**e. Change Directives issued after Phase 1 Construction Permit and During Phases 2, 3, and 4 Iterative Submissions.**

During November 2018, at the same time that Developer was working on the rest of the comments not included in the revised Combined Phase 1 IFC resubmittal and the Change Directives as of that date, Developer was also preparing the design of Phase 2 IFR, North Terminal IFR, Phase 3 90%, and Phase 4 90%.<sup>44</sup>

During December 2018, the Developer submitted design packages including all disciplines for Phases 2, 3, 4 and North Terminal. The Phase 2 IFR design package was submitted to the Owner on December 4, 2018; the North Terminal IFR package was submitted to the Owner on December 4, 2018; and the Phase 3 90% design package as well as the Phase 4 90% design package were submitted to the Owner on December 21, 2018.

Also in December 2018, the Owner issued five (5) new Change Directives:

- Change Directive 16,<sup>45</sup> Reconciliation of DEN Tenants, Airlines, and GHP Concessionaire Spaces, which affects the architectural, MEP, finishes, and furniture/fixtures/equipment (“FF&E”) design and construction on Levels 5 and 6 of the Terminal for Phases 1, 2, and 3 as well as the North Terminal. Of particular note, the new spaces directed by this Change Directive resulted in changes in use and occupancy.
- Change Directive 17,<sup>46</sup> Airline Design Guidelines, which affects the architectural, MEP, FF&E, Electrical & IT (EIT) and finishes design and construction in all four (4) Phases of the Project and the North Terminal.

---

<sup>43</sup> Please see Attachment 77, Change Directive 15.

<sup>44</sup> It is worth noting that the Owner attempted to reject these design packages because the Change Directives were not included. However, the packages could not have included the Change Directives because of when the Change Directives were issued in relation to when the packages were finalized and submitted. This also illustrates quite clearly how the overall progress of the Project was being delayed due to the Change Directives.

<sup>45</sup> Please see Attachment 78, Change Directive 16.

<sup>46</sup> Please see Attachment 79, Change Directive 17.

- Change Directive 18,<sup>47</sup> Level 6 TSA Pet shop (Pod B) Clarification, which affects the Phase 1 architectural, MEP, EIT, and FF&E design on Level 6 of the Terminal.
- Change Directive 20,<sup>48</sup> Existing Art Requirements, which affects the architectural, structural, MEP, and electrical design in all four (4) Phases of the Project as well as the North Terminal.
- Change Directive 21,<sup>49</sup> Restrooms Accessories, which affects the architectural, plumbing, and electrical design for all four (4) Phases of the Project. This Change Directive also modified the previously issued Change Directive 5.

**f. Change Directives issued in 2019 during Tolling Agreements.**

On January 16, 2019, the Owner and the Developer executed the January 16 Tolling Agreement,<sup>50</sup> pursuant to which the Parties agreed to close (scope and cost agreed) and execute Change Orders in respect of all outstanding Change Directives (13) by March 22, 2019. It was clear at this point that Developer would likely not be able to submit for and receive the revised Phase 1 construction permit in February 2019, as originally contemplated in the Combined Phase 1 IFC mitigation agreement. The March 22 deadline was required in order for Developer to move forward with the design in order to have a modified drawings package by May 27, 2019 (the original goal considering all of the new Changes).

Despite the fact that then-open Change Directives were to be resolved by March 22, 2019, throughout February and early March 2019, rather than resolving the already outstanding Change Directives, the Owner issued five (5) new Change Directives.

- Change Directive 19,<sup>51</sup> Cabling from Materna, which affects the EIT design in Phases 1 and 2.
- Change Directive 22,<sup>52</sup> Solid Surface Wall Finish, which affects the architectural design of all four (4) Phases of the Project. This Change Directive modified Change Order 3 for the Project, which was executed on August 8, 2018, and which had already been incorporated in the

---

<sup>47</sup> Please see Attachment 80, Change Directive 18.

<sup>48</sup> Please see Attachment 81, Change Directive 20. Change Directive 19 was not issued sequentially between Change Directive 18 and 20.

<sup>49</sup> Please see Attachment 82, Change Directive 21.

<sup>50</sup> Please see Attachment 9, January 16 Tolling Agreement.

<sup>51</sup> Please see Attachment 83, Change Directive 19.

<sup>52</sup> Please see Attachment 84, Change Directive 22.

Combined Phase 1 IFC Submission as well as the Phase 2 90% design submission and the Phase 2 IFR package, both submitted to the Owner in December 2018.

- Change Directive 23,<sup>53</sup> Design for Water Connection, which impacts the permit received for the Combined Phase 1 IFC Submission in November 2018.
- Change Directive 24,<sup>54</sup> AGTS Pipes, which affects the MEP and EIT design for Phases 1, 2, and 3. The first Change Directive 24 was received on February 14, 2019 but was substantially modified by the Owner on March 21, 2019 through correspondence including revised provisions.<sup>55</sup> On May 1, 2019, the Owner stated in a meeting that it was reverting to the scope of the original February 14 Change Directive, but the Owner then confirmed on May 10, 2019, that the design preferred was the one from the March 26, 2019 Change Directive.
- Change Directive 27,<sup>56</sup> Level 6 Ticketing Kiosk Power and Data Cabling (and modifications to Change Directive 24), which affects the architectural, structural, MEP, and EIT design on Levels 5 and 6 of the Terminal for Phase 1 and 2 of the Project.

None of the Change Directives pending as of the January 16 Tolling Agreement or issued subsequent to that date were not resolved as of March 22, 2019.

Therefore, the Developer and the Owner executed the First Extension of Tolling Agreement on March 22, 2019,<sup>57</sup> with resolution of then-open Change Directives (16 in total) to be complete by April 15, 2019.

Again, rather than actually working to close the already issued Change Directives which were having an undeniable impact on the Project, within days of the First Extension of Tolling Agreement, the Owner issued more Change Directives.

Specifically, three (3) days after the First Extension of Tolling Agreement, and on March 25, 2019, the Owner issued four (4) new Change Directives bringing the total of outstanding Change Directives at that point to 20:

- Change Directive 25,<sup>58</sup> Delete Terminal pay and TTY Phones, which affects the architectural and EIT design for power and data infrastructure in all four (4) Phases of the Project.

---

<sup>53</sup> Please see Attachment 85, Change Directive 23.

<sup>54</sup> Please see Attachment 86, Change Directive 24.

<sup>55</sup> Please see Attachment 87, modified Change Directive 24.

<sup>56</sup> Please see Attachment 88, Change Directive 27.

<sup>57</sup> Please see Attachment 10, First Extension of Tolling Agreement.

<sup>58</sup> Please see Attachment 89, Change Directive 25.

- Change Directive 26,<sup>59</sup> Delete Access Control Rough-In and Change Door Hardware for three (3) CMF Doors, which affects the CMF.
- Change Directive 28,<sup>60</sup> Revise EDR 22 and FF&E Requirements, which affects the FF&E for all four (4) Phases of the Project.
- Change Directive 29,<sup>61</sup> Eliminate EDR 20 – Customer Experience Elements, which affects the EIT design for power and data infrastructure in all four (4) Phases of the Project.

The Change Directives pending at the time of the First Extension of Tolling Agreement (16) and those issued after the execution of that document (4) were not resolved on April 15, 2019. Instead, on April 15, 2019, the Owner sent a letter directing the Developer to continue to work on the Change Directives.<sup>62</sup>

Below is a chart showing the plan from the Combined Phase 1 IFC mitigation agreement but incorporating the multitude of Owner Change Directives issued by the Owner during the time that the Developer was supposed to be working towards the revised Phase 1 construction permit in February 2019.

---

<sup>59</sup> Please see Attachment 90, Change Directive 26.

<sup>60</sup> Please see Attachment 91, Change Directive 28.

<sup>61</sup> Please see Attachment 92, Change Directive 29.

<sup>62</sup> Please see Attachment 93, April 15, 2019, Owner letter regarding Change Directives.

**REDACTED**

Subsequent to the Owner's April 15 correspondence, on May 4, 2019, the Owner and Developer executed the Second Extension of Tolling Agreement and Mediation Agreement.<sup>63</sup>

The Second Extension of Tolling Agreement and Mediation Agreement expired of its own accord on July 15, 2019, with none of the Change Directives having been resolved.

The Change Directives issued by the Owner between November 2018 and March 2019 not only carried with it the direct cost of the actual changed scope of work, but they also directly and significantly affected the Developer's design disciplines and packages across the project as follows:

CD #	CD Name and (Issuance date)	Design Discipline Affected									Design Packages Affected
		Architecture	FF&E	Structures	Mechanical	Plumbing	Fire Alarm, Fire Protection, Life Safety	Civil	Electrical	IT	
15	Storefronts (November 14, 2018)	Phase 1 Phase 2 Phase 3									Combined Phase 1 IFC Phase 2 IFR Phase 3 90%
16	Reconciliation of DEN Tenants, Airlines and GHP Concessionaire Spaces (December 28, 2018)	Phase 1 Phase 2 Phase 3 NT	Phase 1 Phase 2 Phase 3 NT		Phase 1 Phase 2 Phase 3 NT	Phase 1 Phase 2 Phase 3 NT	Phase 1 Phase 2 Phase 3 NT		Phase 1 Phase 2 Phase 3 NT	Phase 1 Phase 2 Phase 3 NT	Combined Phase 1 IFC Phase 2 IFR Phase 3 90% NT IFR
17	Airline Design Guidelines (December 28, 2018)	Phase 1 Phase 2 Phase 3 Phase 4 NT	Phase 1 Phase 2 Phase 3 Phase 4 NT		Phase 1 Phase 2 Phase 3 Phase 4 NT	Phase 1 Phase 2 Phase 3 Phase 4 NT	Phase 1 Phase 2 Phase 3 Phase 4 NT		Phase 1 Phase 2 Phase 3 Phase 4 NT	Phase 1 Phase 2 Phase 3 Phase 4 NT	Combined Phase 1 IFC Phase 2 IFR Phase 3 90% Phase 4 90% NT IFR
18	Level 6 TSA Pet shop (Pod B) Clarification (December 28, 2018)	Phase 1			Phase 1				Phase 1	Phase 1	Combined Phase 1 IFC
19	Cabling from Materna (February 20, 2019)								Phase 1 Phase 2	Phase 1 Phase 2	Combined Phase 1 IFC Phase 2 IFR Phase 3 90%
20	Existing Art Requirements (December 28, 2018)	Phase 1 Phase 2 Phase 3 Phase 4 NT		Phase 1 Phase 2 Phase 3 Phase 4 NT	Phase 1 Phase 2 Phase 3 Phase 4 NT		Phase 1 Phase 2 Phase 3 Phase 4 NT		Phase 1 Phase 2 Phase 3 Phase 4 NT		Combined Phase 1 IFC Phase 2 IFR Phase 3 90% Phase 4 90% NT IFR
21	Restrooms Accessories (December 05, 2018)	Phase 1 Phase 2 Phase 3 Phase 4 NT				Phase 1 Phase 2 Phase 3 Phase 4 NT			Phase 1 Phase 2 Phase 3 Phase 4 NT		Combined Phase 1 IFC Phase 2 IFR Phase 3 90% Phase 4 90% NT IFR

<sup>63</sup> Please see Attachment 11, Second Extension of Tolling Agreement and Mediation Agreement.

CD #	CD Name and (Issuance date)	Design Discipline Affected									Design Packages Affected
		Architecture	FF&E	Structures	Mechanical	Plumbing	Fire Alarm, Fire Protection, Life Safety	Civil	Electrical	IT	
22	Solid Surface Wall finish (February 13, 2019)	Phase 1 Phase 2 Phase 3 Phase 4 NT									Combined Phase 1 IFC Phase 2 IFR Phase 3 90% Phase 4 90% NT IFR
23	Design for Water Connection (February 23, 2019)					Phase 1		Phase 1			Combined Phase 1 IFC
24	AGTS Pipes (February 13, 2019)				Phase 1 Phase 2 Phase 3	Phase 1 Phase 2 Phase 3		Phase 1 Phase 2 Phase 3	Phase 1 Phase 2 Phase 3	Combined Phase 1 IFC Phase 2 IFR Phase 3 90%	
25	Delete Terminal pay and TTY Phones (March 25, 2019)	Phase 1 Phase 2 Phase 3 Phase 4						Phase 1 Phase 2 Phase 3 Phase 4	Phase 1 Phase 2 Phase 3 Phase 4	Combined Phase 1 IFC Phase 2 IFR Phase 3 90% Phase 4 90%	
26	Delete Access Control Rough-In and Change Door Hardware for three (3) CMF Doors (March 22, 2019)							CMF	CMF	CMF IFC	
27	Level 6 Ticketing Kiosk Power and Data Cabling (March 15, 2019)	Phase 1 Phase 2		Phase 1 Phase 2	Phase 1 Phase 2			Phase 1 Phase 2	Phase 1 Phase 2	Combined Phase 1 IFC Phase 2 IFR	
28	Revise EDR22 and FF&E requirements (March 25, 2019)		Phase 1 Phase 2 Phase 3 Phase 4					Phase 1 Phase 2 Phase 3 Phase 4	Phase 1 Phase 2 Phase 3 Phase 4	Combined Phase 1 IFC Phase 2 IFR Phase 3 90% Phase 4 90%	
29	Eliminate EDR20 – Customer Experience Elements (March 25, 2019)							Phase 1 Phase 2 Phase 3 Phase 4	Phase 1 Phase 2 Phase 3 Phase 4	Combined Phase 1 IFC Phase 2 IFR Phase 3 90% Phase 4 90%	

In addition to the foregoing, and as shown described in the subsequent section of this Claim that addresses each of the unresolved Change Directives individually, the process from Change Directive issuance to presentation of a PCE has negatively impacted the design-build nature of the Project. Owner's mismanagement of the change order process impacted the PCE process as well. A PCE could not be issued until the full scope of the changed work was understood. If the changed scope was ill-defined, and it was, it would have an impact on Developer's ability to submit PCEs until both Owner and Developer understood the scope. The evolution seen in each of the revised PCEs follows some version of the following sequence of events as also detailed later in the document for each Change Directive:

- Clarification meeting or RFI in order to resolve all the undefined issues of the Change Directive.
- A set of design meetings in order to reach an agreement of the layout and all the Change Directive elements.
- Developer proceeds with the development of the design in order to get to a "frozen" layout (i.e. room dimensions, partitions, flooring, ceiling height, etc.) so all the design disciplines can design their part.
- All the design disciplines (Architectural, Structural, FF&E, MEP, EIT, Life Safety, etc.) start to work in the design of their systems affected by the Change Directives once the layout has been "frozen." During this process, the interrelationships between disciplines are managed and BIM spatial coordination meetings are held to recognize potential clashes and assess buildability.
- When spatial coordination is completed, the final coordination and integration of the elements on ceilings, partitions, walls, and floorings is performed.
- Finally, the designers do their QA/QC review and submit the packages to the Developer. When the Developer receives the package, an internal QA/QC takes place, and when this process is completed, the design package is submitted to the Owner.

The Change Directives issued by the Owner from November 2018 to the present – after the Combined Phase 1 IFC Submission was already permitted – disrupted the Developer's design and did not allow the Developer to revise the Combined Phase 1 IFC Submission towards the agreed amended permit that would be issued no later than February 13, 2019. The ongoing issuance of Change Directives in early 2019 exacerbated this problem and resulted in the design not only for Phase 1 but also for the remaining Phases of the Project being impacted.

As a result of the Owner-directed changes required to be implemented by the foregoing Change Directives, the Developer was required to submit for permitting a revised Combined Phase 1 IFC Submission ("the Modified Drawings"). This resubmission did occur on June 4, 2019, and that is based, in part, on the design for the various disciplines having been "frozen" on April 15, 2019.<sup>64</sup>

---

<sup>64</sup> Please see Attachment 94, Response to Owner's April 15 Letter Concerning Change Directives. This response highlights numerous errors and omissions included in the Owner's April 15 letter.

**g. Disruption to the design-build process requiring the modified drawings**

Following submission of the revised Combined Phase 1 IFC Submission on June 4, 2019, it is anticipated that the Owner will provide its Letter of Authorization, allowing the Developer to submit the design package for permitting to the City, on June 17, 2019. Thereafter, it is assumed the City will engage in a four (4) week review process (through July 16, 2019), followed by an additional two (2) weeks for the Developer to address any comments from the City to the revised Combined Phase 1 IFC Package (through July 30, 2019). This, in turn, is expected to be followed by another two (2) weeks of review/approval process with the City (through July 30), and the permit for the Modified Drawings (revised Combined Phase 1 IFC) is then expected to be issued by the City on August 13, 2019 (almost exactly one year after the original Combined Phase 1 IFC Submission).

Following receipt of the revised Phase 1 architectural and MEP permit, the Developer and its subcontractors will produce the shop drawings that will be needed for installation and construction purposes. Following approval of the shop drawings, procurement of the materials can proceed, delivery can occur, and construction works can commence. The Developer has estimated, based on previous submissions, a period of eight (8) weeks for the preparation and approval of the shop drawings (through October 09, 2019). The Developer also estimates an additional two (2) weeks for the procurement and delivery of key materials (through October 23, 2019).

The process outlined above results in a commencement of the MEP and Architectural construction works on October 24, 2019.

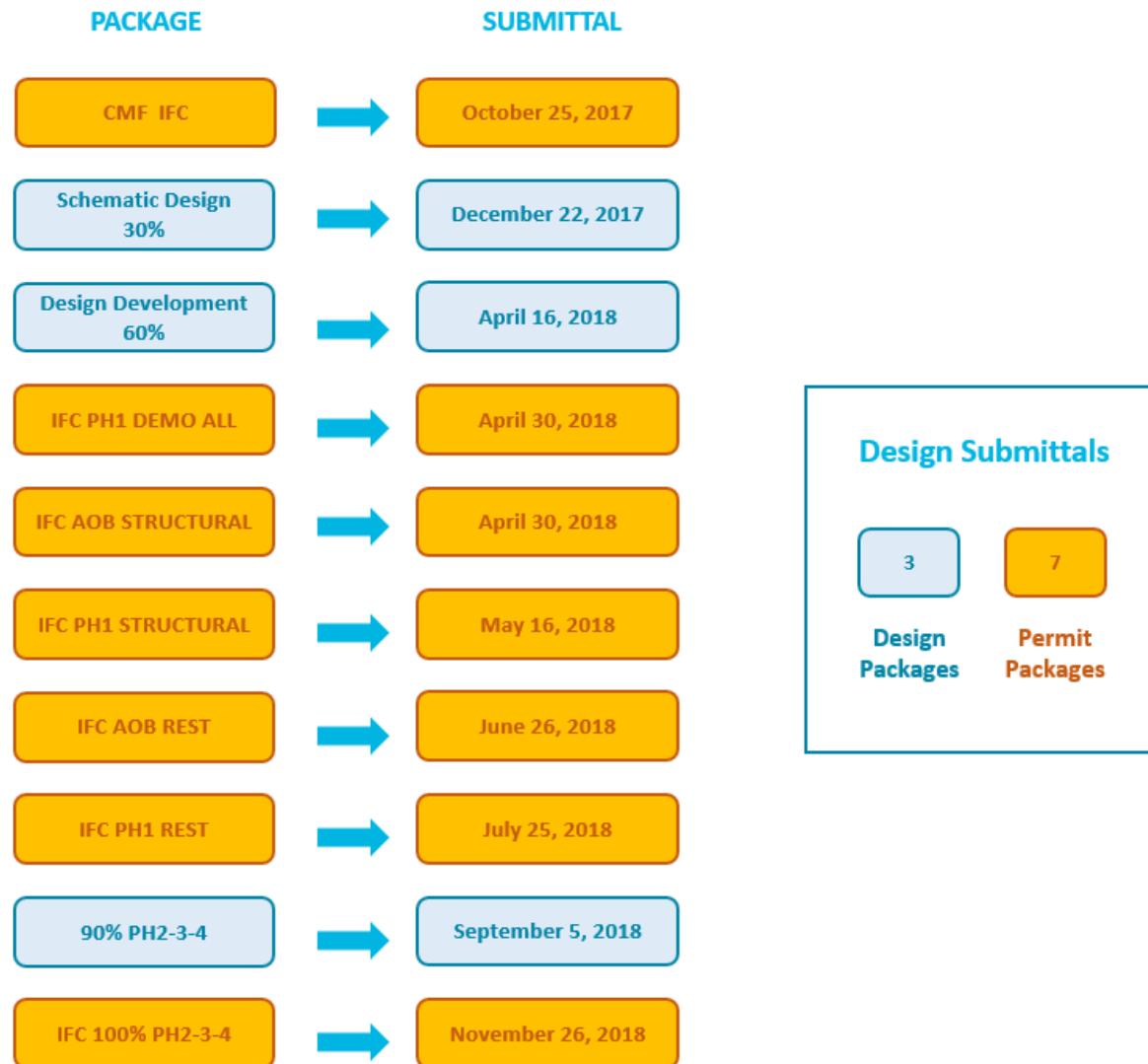
The aforementioned process is shown in the graphic below.

**REDACTED**

**h. Attempted mitigation to the impacts caused by the Change Directives**

In an effort to mitigate against the impacts caused by the Owner's Change Directives, Developer first agreed to the Combined Phase 1 IFC Submission mitigation agreement. As described above, while this mitigation agreement sought to eliminate the delays being caused on the Project as a result of the Owner's Change Directives, Developer actually absorbed more risk in doing so. For instance, the work for the AOB Corridor/North Terminal is now back loaded, and Developer also had to simultaneously address ongoing comments from the Owner while also incorporating comments from the City.

## Design Submittals according to Development Agreement



## Design Submittals as a result of or mitigating against Owner Impacts

PACKAGE	SUBMITTAL	PACKAGE	SUBMITTAL	PACKAGE	SUBMITTAL
CMF 60%	January 29, 2018	Combined PH1 90-IFR-IFC	August 15, 2018	AOB Arch. Demo. IFC	December 11, 2019
CMF IFR	February 28, 2018	Backflow Preventer IFC	August 17, 2018	Ph3 IFR	December 21, 2018
CMF IFC	May 02, 2018	Grease Intercept. IFC	August 24, 2018	Ph4 IFR	December 21, 2018
Schematic Design – 30%	December 22, 2018	Gas Connect. IFC	August 27, 2018	Ph2-3 Demo Terrazzo IFC	April 15, 2019
Design Dev. 60%	April 16, 2018	AOB Str. IFC	September 6, 2018	Ph2-3 Demo Façade IFC	April 17, 2019
Ph1 Demo IFR	March 30, 2018	Ph2 90%	September 28, 2018	GHP Conc. Offices IFC	April 19, 2019
Ph1 Demo IFC	May 15, 2018	AOB Arch. Demo. IFR	November 7, 2018	B1 – Ph1 MEP IFC	May 17, 2019
Ph1 Str. IFR	May 4, 2018	AOB IFR	December 4, 2018	B3 – Ph1 Mod. Drawings IFC	June 4, 2019
Ph1 Str. IFC	June 13, 2018	Ph2 IFR	December 5, 2018	B2 – Ph1 Airs. Restrooms IFC	June 5, 2019
AOB Str. IFR	May 29, 2018	Ph2 Transfer Beams IFC	December 4, 2018	Ph2 Str. IFC	June 19, 2019

**Design Submittals**

<span style="border: 1px solid #ccc; padding: 5px; border-radius: 5px;">13</span> <b>Design Packages</b>	<span style="border: 1px solid #ccc; padding: 5px; border-radius: 5px;">17</span> <b>Permit Packages</b>
---	---

The resubmission of the Modified Drawings with all Change Directives incorporated occurred on June 4, 2019, and that is based, in part, on the design for the various disciplines having been “frozen” on April 15, 2019. This is a mere seven (7) weeks from an assumed “frozen” design to a fully incorporated Modified Drawings package.

In addition, Developer and its subcontractors will start working at risk on the production of the shop drawings immediately after the modified drawings design is released on June 4, 2019. This will be proceeding at risk because the final permitted drawings will have to incorporate all relevant comments provided by the City. The procurement of some key components of the MEP installation will proceed at risk as has been overlapped with the approval of the deferred submittal to mitigate delays. The fabrication and delivery of key components of the MEP installation has also been overlapped with the procurement activities. All this considered, the Developer is assuming that it will only take two (2) weeks from the approval of the deferred submittal to the start of the MEP works on site.

Developer will continue to work collaboratively with the City to facilitate as reduced a review and permitting time as possible. However, Developer’s ability to implement additional mitigation measures is becoming increasingly more difficult as construction progress. As Owner knows, work space within the active airport is extremely limited, making changes by the Owner more challenging. Developer has repeatedly requested and proposed alternatives to mitigate the impact of these Change Directives, including but not limited to resequencing certain activities, provision of additional laydown space, receiving more advanced warning concerning train schedules, and additional lane shutdowns so it can deliver more material. Owner has either rejected or not responded to these numerous requests.

Making matters worse, the Owner has seen a remarkable increase in passenger volume. According to published data, the Denver International Airport has seen over the past year an increase of 5.1 % of passenger traffic<sup>65</sup>. While a positive for the Owner, this only makes an already restricted area even more constrained, with the numerous contractors at site scrambling for ever-increasingly limited space to perform

---

<sup>65</sup> Please see Attachment 95.

their work. Developer's ability to mitigate Owner delays are becoming more unrealistic as the volume of passengers and construction work increases.

Also, Developer is assuming eight (8) weeks for permit approval, which is a reduced time considering that the original design, that now is incorporating all the Change Directives, has already been reviewed by the City. The procurement of some key components of the MEP installation has also been overlapped with the approval of the deferred submittal to mitigate delays. The fabrication and delivery of key components of the MEP installation has also been overlapped with the procurement activities.

Finally, Developer is ready, willing and able to undertake future mitigation and have been sending letters to Owner to be permitted to do the same. Developer urges Owner's cooperation in this process to avoid further delays caused by Owner changes. However, as noted in Relief Event Claim 6, the Owner's May 3, 2019, correspondence is concerning, as it evidences a closed mind by the Owner in terms of how the Project may be able to be structured differently in order to mitigate against the Owner's delays.<sup>66</sup>

As it stands, the delay caused by the Change Directives to Developer's design is likely not able to be mitigated against. Those delays are, unfortunately, already set, as it was not until June 4, 2019, that Developer was able to submit its Modified Drawings to the City for permitting. Mitigation may be possible in future construction activities, but the extent of any such mitigation hinges upon the constraints placed upon Developer by Owner.

This concludes the first portion of this Claim, which as previously introduced, is an overview s intended not only as support for the requested compensable time extension attributable to this Relief Event, but also as a lens through which the subsequent portion of this Relief Event Claim is meant to be viewed. The following section will address each of the twenty (20) unresolved Change Directives individually, including their individual history and requested compensation.

---

<sup>66</sup> Please see Attachment 51C, May 3, 2019, Owner Letter.

### **III. Detailed explanation of Change Directives.**

The previous section of this Relief Event Claim provided an overview and context of how these Owner Changes were mismanaged by the Owner. In this Section, Developer will address the individual Change Directives that form the bases of Relief Event Claim 18 (Change Directives).

#### **a. Change Directive 6 – Relocate GHP’s Concessions Office**

The Owner issued Change Directive 6 on March 27, 2018 - relocate the new LS Concessions Offices (4,700 SF) on the Level 5 AOB Corridor to the existing office space on level 4 east side of the AOB Corridor (4,700 SF) (the “**Change Directive**” or “**Change Directive 6**”).<sup>67</sup>

Change Directive 6 concerns the relocation of the office spaces provided to the Developer pursuant to the Concessionaire Office Lease Agreement for use by the Developer’s Concessionaires as their Concessions offices during the applicable Concession term. It directs the Developer to relocate such offices from Level 5 of the AOB Corridor to Level 4 outside of the Project Work Site. To accomplish this Change Directive, once the offices were located, Developer was required to provide a “white box” for the Owner on Level 5 in the space previously occupied by the office spaces for the Developer’s Concessionaires. Change Directive 6 was unclear regarding the “white box,” as it did not include the Owner’s requirements and where the utilities would be stubbed-in to that space.

Specifically, Change Directive 6 states:

The Owner is providing this Change Directive (CD) #006 to relocate the new LS Concessions Offices (4,700) SF on the Level 5 AOB Corridor GHP, to the existing office space on Level 4 east side of the AOB Corridor (4,700) SF.

The Owner shall deliver to the Developer a “White Box” open interior space (4,700) SF on Level 4 east side of the AOB Corridor (between grids N32-N36 and E2-E4) free of the existing interior partitions, for buildout of the LS Concessions Offices. The Developer shall deliver to the Owner a “White Box” open interior space (4,700 SF) on the Level 5 AOB Corridor (between grids N400N43,5 and W2.4-W4), for buildout of future Owner’s FIS Space.

---

<sup>67</sup> Please see Attachment 62.

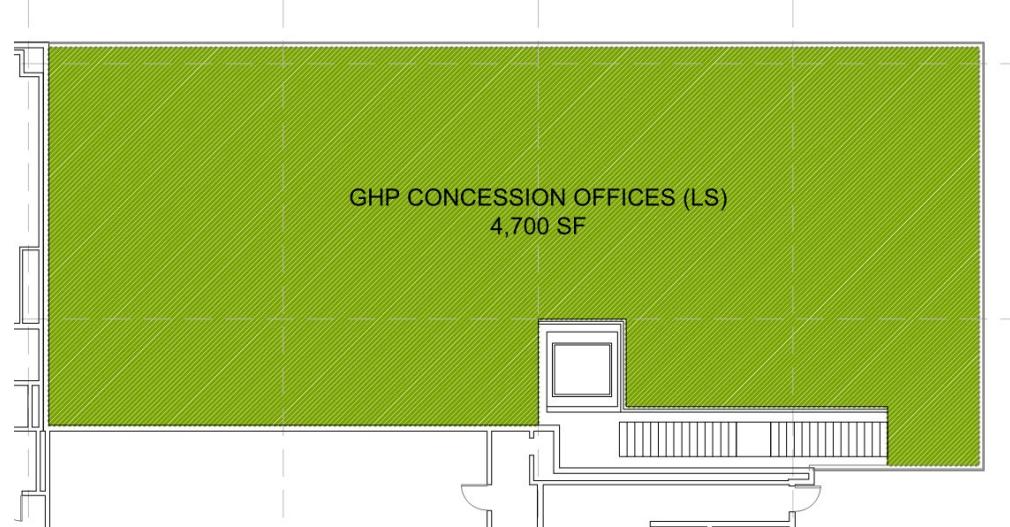
This Change Directive was issued three months after the 30% Schematic Design for all aspects of the Project was delivered on December 21, 2017, and during the time when the 60% Design Development submission for all aspects of the Project was being prepared. As discussed in more detail above in section I of this Claim, the 60% Design Development submission package for all aspects of the Project was submitted by the Developer to the Owner on April 16, 2018 and, prior to that date, it was agreed with the Owner that these areas would be “hatched” and noted as work-in-progress to indicate that this design was still under development.<sup>68</sup>

Change Directive 6 initially required the elimination of “the new open Stair from Level 6 down to Level 5 (ST-5 between grids N42-N43) [...].” However, during subsequent design and code review of the AOB Corridor under a different Change Directive (Change Directive 7), it was determined that the final stair location and configuration had to remain due to egress requirements of Change Directive 7 layouts.

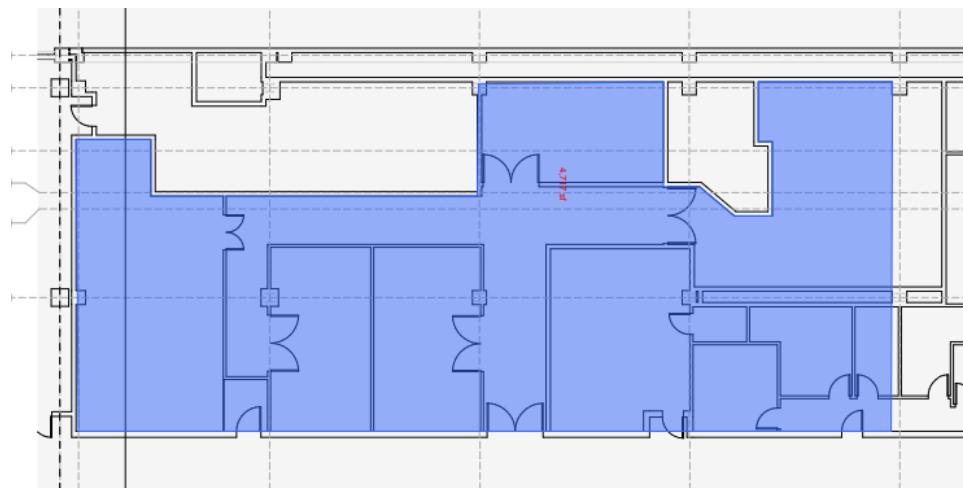
Additionally, as a result of moving the office space from Level 5 to Level 4, and as part of the Change Directive 6 “design development,” Developer had to reorganize the space to allow for additional storage or offices as needed. Both Level 5 and Level 4 spaces had the same square footage but a different shape which required a rearrangement of the interior office spaces. Please see the layouts below; from the Development Agreement and the Change Directive, respectively.

---

<sup>68</sup> Please see Attachment 64.



**Development Agreement – GHP Concession Offices space**



**Change Directive 6 – GHP Concession Offices space**

Change Directive 6 briefly included statements to relocate the new LS Concessions Offices (4,700) SF on the Level 5 AOB Corridor GHP, to the existing office space on Level 4 east side of the AOB Corridor (4,700) SF and deliver “White Boxes” to the Developer and the Owner on their new spaces on Level 4 and Level 5, respectively. Essentially, the Change Directive required movement of spaces from Level 5 to Level 4 as well as a reconfiguration of those spaces.

After the Change Directive was issued on March 27, 2018, Developer had no further details from the Owner about what a “White Box” requirement meant as no specifications or conceptual design had been provided by the Owner as part of Change Directive 6. Contrary to verbal representations received from the Owner (Jacqueline Rainey) during that time, the definition of what constitutes a “White Box” was not sufficiently defined in the Agreement.

As a result, it was agreed during the weekly executive meeting on April 25, 2018, that Developer would send an RFI asking for clarification of what a "white box" means for the 4,700 SF spaces on Levels 5 and 4 that had to be revised as part of the Change Directive. It was also agreed that the Developer would also clarify when the Owner is required to provide the IFC permit for the Level 4 space (4,700 SF) for the Developer to start with its interior design of the Concessionaire office spaces.<sup>69</sup>

Developer submitted RFI-032 to the Owner on May 5, 2018, requesting confirmation on the space (4,700 SF) in Level 5 AOB Corridor to be delivered as "White Box" to be used by the Owner for its federal inspection service (FIS) space.<sup>70</sup>

The Owner responded to RFI-032 on June 6, 2018, stating that the Developer will need to inform the Owner about the requirements for this space so the Owner can design the "White Box".<sup>71</sup> In effect, the Owner had requested a “white box” as part of the Change Directive, when clarification was requested from the Owner as to what constitutes a “white box,” the Owner advised Developer to issue an RFI, and then in

---

<sup>69</sup> Please see Attachment 258.

<sup>70</sup> Please see Attachment 259.

<sup>71</sup> Id.

response to the RFI, the Owner asked Developer to inform the Owner on what constitutes a “white box” (i.e. to advise what the requirements were).

Developer had to issue a new program for the GHP Concessionaire offices on June 15, 2018<sup>72</sup> since the shape of the new space at Level 4 differed from previous Level 5 and Developer Concessionaire offices had to be reorganized.

Developer provided its first PCE for Change Directive 6 on September 26, 2018.<sup>73</sup> As noted above, a PCE could not be provided earlier due to the lack of clarity and definition from the Change Directive issuance. For purposes of this PCE, Developer assumed that the Owner, in order to create the “white box” condition that it was required to deliver to the Developer on Level 4, would remove and dispose of all existing improvements including:

- Interior doors and partitions
- Finish flooring and any flooring mastic back to a bare concrete floor condition
- Finish Ceilings
- Equipment
- Furnishings
- Mechanical and electrical systems while maintaining code required fire sprinklers, strip fluorescent stumble lighting, and fire alarm systems

As the Owner needed to provide locations for where the utilities will be stubbed-in to space, a meeting was held on October 26, 2018, in order for the Owner to provide to the Developer the program requirements, a timeline, and a “white box” definition.<sup>74</sup> As a result of the meeting, the responsibility matrix, timeline and status of Change Directive 6 were agreed to. See below.

---

<sup>72</sup> Please see Attachment 260.

<sup>73</sup> Please see Attachment 266a. Additional PCEs were delivered on January 22, 2019; and March 25, 2019. Please see Attachments 266a, b, and c, respectively.

<sup>74</sup> Please see Attachment 261.

**Responsibility matrix, timeline and status**

Task	Responsible Party	Completion Date	Current Status
Vacate existing tenants from area	DEN	Ph. 1 – 12/15/18 Ph. 2 – 4/15/19	Owner will clear out last DEN concession tenant on 12/15/2018; DEN AIM cannot relocate from Phase 2 area until replacement space is complete (4/15/2019)
Design White box area – Phases 1 & 2	DEN	12/31/18	See specifications provided in Exhibit A below. Owner will invite GHP to white box design review meetings.
Demo and construction of Phase 1 area	DEN	12/31/18 – 3/1/19	
Turnover of Phase 1 White box area	DEN	3/1/19	
Design Concession offices	GHP/GHB	TBD	A conceptual layout for the Level 4 AOB Corridor area has already been completed by GHB, at GHP's direction.
Construct Phase 1 tenant finish	GHP/GHB	After 3/1/19	
Phase 1 Concession office FF&E	Per DA	TBD	TBD
Demo and construction of Phase 2 area	DEN	4/16/19 – 6/30/19	Will commence once DEN AIM personnel have vacated.
Turnover Phase 2 White box area	DEN	7/1/19	
Construct Phase 2 tenant finish	GHP/GHB	After 7/1/19	
Phase 2 Concession Office FF&E	Per DA	TBD	TBD

The Owner provided correspondence on December 18, 2018, with updated White Box Guidelines as part of Change Directive 6.<sup>75</sup> This is the type of information that should have been included as part of the original Change Directive 6 issued on March 27, 2018, nine months earlier, but since no conceptual design or technical information was originally provided as part of the Change Directive, Developer and Owner had to work through multiple design review meetings and a design development in order to define an accurate Change Directive design and scope.

---

<sup>75</sup> Please see Attachment 262.

On January 9, 2019, the Owner issued a “for information only” transmittal with the Owner’s requested "White Box" design for Level 4.<sup>76</sup> This was the second set of drawings following the previous design iteration sent on December 18, 2018.

The January 16 Tolling Agreement was executed on January 16, 2019, with the Change Directives to be resolved no later than March 22, 2019.

Developer provided a revised PCE for Change Directive 6 on January 23, 2019, with the design and construction schedule, taking into account the new information provided by the Owner in December 2018 and January 2019.<sup>77</sup>

On January 25, 2019, the Owner issued the IFC "White Box" design for Level 4 so Developer could start with the interior design of the tenant spaces as per the requirements set forth in Change Directive 6 and Developer program information.<sup>78</sup>

The Change Directives, including this Change Directive 6, were not resolved as of March 22, 2019. So, the First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

Developer provided a Revised PCE for Change Directive 6 on March 25, 2019.<sup>79</sup>

On April 11, 2019, Developer submitted the Concessionaire Offices IFC package to the Owner<sup>80</sup> and requested the Letter of Authorization (LOA) from Owner.<sup>81</sup> This letter is required to be issued by the Owner before the IFC package may be submitted to the City for permitting because this is a Submittal Type 1 per the Technical Design Review Table within Section I.8.3.3 of the Technical Requirements to the

---

<sup>76</sup> Please see Attachment 263.

<sup>77</sup> Please see Attachment 264.

<sup>78</sup> Please see Attachment 265.

<sup>79</sup> Please see Attachment 266c.

<sup>80</sup> It was agreed between Developer and Owner that Developer would submit an IFC package without first having submitted an IFR package for Owner review through Change Management Meetings and PCE submissions. In reality, the Owner did briefly review the submission as they noted they had no comments.

<sup>81</sup> Please see Attachment 267.

Agreement. Per Appendix 1 to the Agreement Submittals Type 1 require that the Owner first provide written approval of the package prior to the Developer proceeding.

The Change Directives were not resolved as of April 15, 2019, as contemplated in the First Extension of Tolling Agreement.

On April 17, 2019, the Owner responded to the IFC stating that "DEN has no further comments on the Level 4 Concession Space drawings." This was followed by the LOA on April 18, 2019<sup>82</sup>.

On April 18, 2019, Developer issued the "Concessionaire Offices" IFC package to the City for permitting.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>82</sup> Please see Attachment 268.

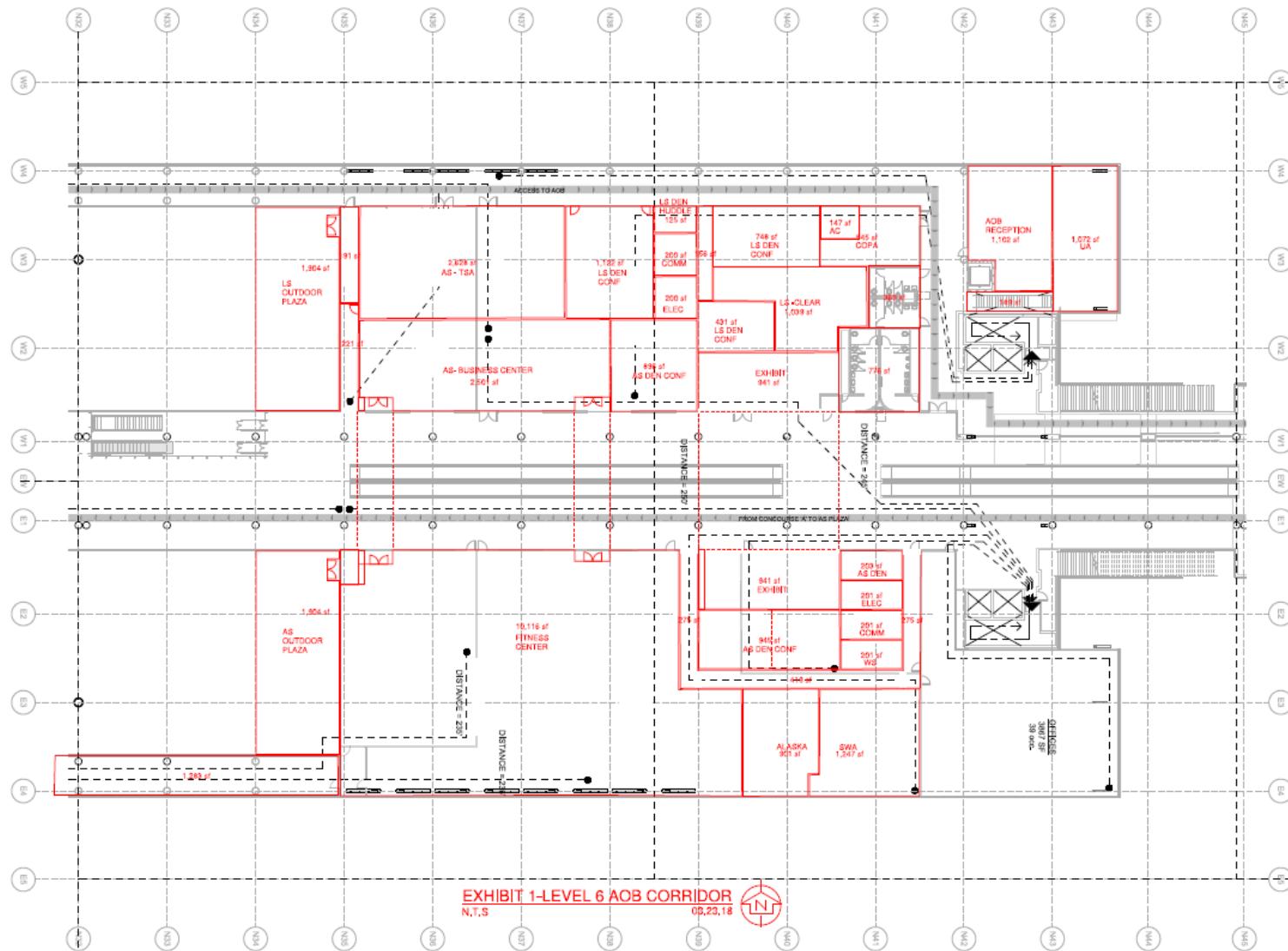
**b. Change Directive 007 - Level 6 AOB Corridor Program Revisions**

Developer received Change Directive – 07 “Level 6 AOB Corridor Program Revisions” from the Owner on March 27, 2018 (the “**Change Directive**” or “**Change Directive 7**”).<sup>83</sup>

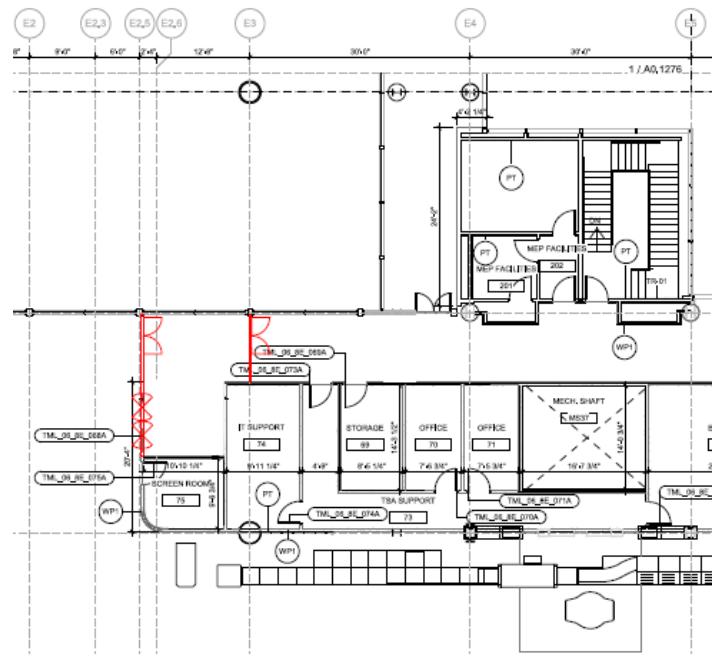
Change Directive 7 directed a new architectural program for the North Terminal build out, often referred to as the AOB corridor, a new Employee Access Portal (EAP) and the relocation of the AOB Pink Badge desk. Below are the new layouts required for Change Directive 7.

---

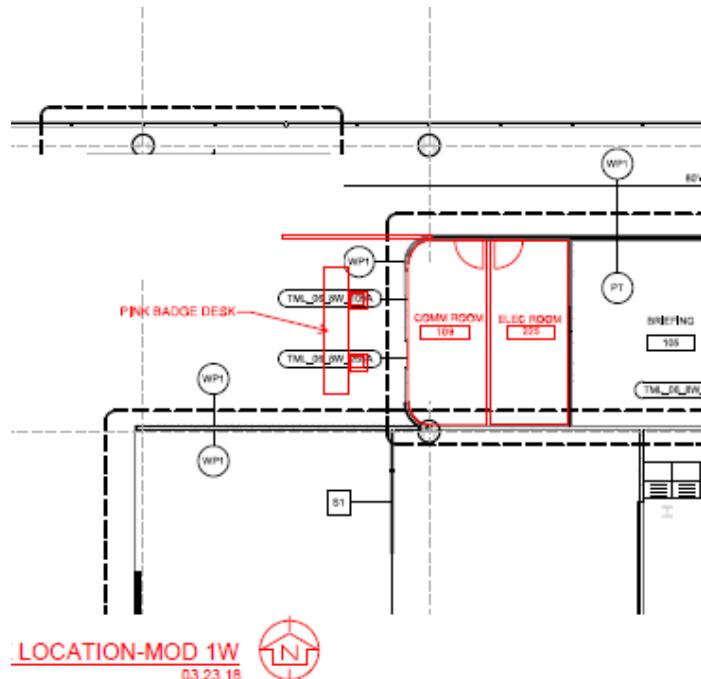
<sup>83</sup> Please see Attachment 67.



## **Change Directive 7 Exhibit – Red lines represent Owner revisions to original build out**



## **Change Directive 7 Exhibit – EAP layout (in red)**



## **Change Directive 7 Exhibit –Pink Badge desk (in red) layout**

Change Directive 7 provided, in pertinent part:

The Owner is providing this letter as Change Directive #007 to describe the preferred Level 6 AOB Corridor layout. Exhibit 1 is attached for reference.

In addition to the Level 6 AOB Corridor updated layout, the Owner is providing this letter to describe the revised location of the Employee Access Portal (EAP) and Pink Badge desk in Mod 1 of the Terminal. A new EAP will be added to Level 6, north of the East Security Screening Check Point (SSCP) to access the secured AOB Corridor. This new EAP location on Level 6 will replace the proposed EAP location on Level 5 at the north end of the Airside Plaza (beneath the grand staircase), which should be eliminated. The Pink Badge Desk area currently shown north of the West SSCP queue enclosure shall be located adjacent to the Elec and Comm. rooms. To include the Pink Badge desk in this location, the Comm. Room (109) and Elec Room (255) will need to rotate 90 degrees. Exhibits 2a and 2b are attached for reference.

The Exhibits shall be considered conceptual program space planning layouts provided by the Owner, not a final design. Additional interior space planning will be required by Denver Great Hall, LLC to complete the program requirements. Please provide a proposed design review meeting to resolve any scope of work questions so the Owner can facilitate the stakeholders' participation. If you have any questions or concerns, please let us know.

Change Directive 7 affected the entire layout of the Level 6 North Terminal; approximately 46,000 square feet. The addition of the EAP and Pink Badge desk affected the Northern sections of the Level 6 TSA screening area. All design disciplines are affected by this Change Directive.

This Change Directive was issued three months after the 30% Schematic Design for all aspects of the Project was submitted on December 21, 2017 and during a time when the 60% Design Development submission for all aspects of the Project was being prepared. The 60% Design Development submission package for all aspects of the Project was submitted by the Developer to the Owner on April 16, 2018 and, prior to that date, it was agreed with the Owner that these areas would be "hatched" and noted as work-in-progress to indicate that this design was still under development.<sup>84</sup>

---

<sup>84</sup> Please see Attachment 268a.

The lack of Owner program information for the AOB Corridor was identified as delaying design progression in a weekly ‘Issues Log’ meeting involving both the Owner and Developer in January 2018. This identification predated the Owner’s issuance of Change Directive 7 in March 2018.

Below is an excerpt from the January 30, 2018 meeting minutes (Version 2.0):<sup>85</sup>

AOB spaces not fully defined in the PDA stage.	Fluidity on potential layouts and tenants. Space not yet formally allocated in the AS or LS offices. Potential employee portal being discussed. Some spaces layouts (eg Alaska Airlines) being developed by LVA without an allocated position on the AOB which could lead to abortive work.	DEN internal meetings being held. DEN to provide program information to GHP/GHP as soon as possible. Deadline for agreed architectural layouts completed by GHB by 03/02/18.
--	---	--

The issue was also discussed in a meeting on February 8, 2018 (prior to issuance of the Change Directive), and as requested by Developer.<sup>86</sup> The invite from this meeting clearly identifies that program information was lacking and was hindering design progress:

We’d like to have a meeting to understand your program requirements in the AOB corridor and see if we can assist in this process at all. Currently, [Developer] do not have guidance on:

Program information/tenants in these spaces

Whether these office spaces require Airline/Tenant comms rooms (current design only allows for DEN comms room)

If you require an additional employee portal on the East of the corridor  
Altering some of these factors may also require a restroom redesign.

A meeting was also held on February 15, 2018<sup>87</sup> (before the Change Directive was issued), in which some elements of the program were discussed, but it is clear that at this point in time, the Owner had not yet confirmed their requirements. An excerpt from the minutes of meeting demonstrating this can be found below.

<sup>85</sup> Please see Attachment 269a.

<sup>86</sup> Please see Attachment 269b.

<sup>87</sup> Please see Attachment 269c.

### **Gym**

- DEN to confirm electrical service stub-in locations **Action #5**
- Include plumbing rough-in for showers
  - DEN recommends referral to Tenant Requirements (TR's)

### **Art/Event Storage – 5E3**

- White box with finished ceiling
- New wider entry door or double doors
  - Would also consider a roll-up door
- Furniture shelving units (not built-in)
  - DEN to confirm size and quantity **Action #6**

### **Ops Storage – former Sky Cabs spaces**

- White box
- New wider entry doors

### **Overall AOB Corridor Space Plan**

- Switch GHP space location with Customs
- DEN requests review of alternate employee portal location on south end
- GHB to confirm square footage of north area **Action #7**
  - Estimated at 2,925 sq. ft. in meeting

The Developer eventually received Change Directive 7 on March 27, 2018.<sup>88</sup>

Referring to Appendix 1-B Architectural Scope of Exhibits in the Technical Requirements<sup>89</sup>, a number of spaces were identified to be provided in the AOB Corridor. The purpose of this document (Appendix 1-B) was to provide an outline scope, and for the Owner to further define locations and program information for spaces in line with the design progressions in accordance with the Project schedule.

Within the affected area, the main differences between the Agreement scope and the scope identified in the Change Directive are listed below. It should be noted, that after many months of refinement with the Owner, many of these items were superseded by new layouts.

- Two new outdoor plazas added to the AOB corridor roof;
- DEN Gym / Fitness Centre moved from the West Terminal to the East Terminal;
- DEN Business Centre moved from the East Terminal to the West Terminal;
- Two new exhibit spaces added;
- All Electrical and Communication rooms relocated;

---

<sup>88</sup> Please see Attachment 269.

<sup>89</sup> Please see Attachment 266.

- Six airline offices added – requiring additional liaising with airline stakeholders
- New AOB reception added;
- TSA Extra space reduced from 3,000 SF to 2,628 SF;
- DEN Credit Union removed;
- Office space identified in the Architectural Scope of Exhibits was repurposed into conference rooms, huddle rooms and a space provided for the CLEAR program;
- New Employee Access Portal added to the North East of the main terminal;
- Pink Badge desk relocated from North West security checkpoint; and
- GHP Office increased in size from 3,680 SF to 3,867 SF.

Each of the items bullet-pointed above were differences from the base scope and the Change scope.

A visual comparison of the Agreement scope originally contemplated for the AOB corridor and the new AOB corridor scope required by Change Directive 7 can be found below.

**REDACTED**

**REDACTED**

On April 17, 2018, Developer met with the Owner to review the status of Change Directive 7 and its design.<sup>90</sup> Although Developer had previously started the design analysis of Change Directive 7, this was not included in the 60% design submission delivered on April 16, 2018, because the AOB layout was not “frozen” by the Owner.<sup>91</sup>

This Change Directive 7 was not sufficient in content to enable design to be implemented. As only a schematic layout had been issued, the Owner had not assessed the impact several key elements required for the Developer to undertake the new design including egress, existing structural and MEP, and compliance with the Denver Building Code.

A request for some of this additional information was submitted by the Developer to the Owner on April 26, 2018<sup>92</sup> in which the Developer made comments on the Change Directive 7 schematic layout. The excerpt from this document below demonstrates the extent of the missing information.

---

<sup>90</sup> Please see Attachments 270 and 271.

<sup>91</sup> Please see Attachment 4.

<sup>92</sup> Please see Attachment 272.

**REDACTED**

On May 3, 2018, Developer met with the Owner for a Change Directive 6 and Change Directive 7 review meeting and analyzed major Denver Building Code (“DBC”) implications of Change Directive 7.<sup>93</sup> Due to the increase in usage of the spaces, the new layout indicated a large increase in occupancy and egress requirements of the DBC.

On May 02, 2018, Developer received from the Owner responses to comments raised by Developer on April 26, 2018.<sup>94</sup> Although this answered some of the Developer’s initial questions, this led to further “design development,” which required additional meetings to answer new queries.

It is clear that due to the complexity, scale, lack of information provided in the Change Directive, and that initial queries related to the Change Directive had only been answered by the Owner on May 02, 2018 that the PCE could not be priced at this stage, as the Developer did not know what it was being requested to price.

On May 10, 2018, and as an outcome of the May 3, 2018 review meeting, Developer performed an AOB occupancy calculation since the developing Change Directive 7 requirements from the Owner had doubled the occupancy levels.<sup>95</sup> Because of the increased AOB occupancy, Developer suggested to add additional egress stairs on the northeast and northwest sides of the AOB Corridor.<sup>96</sup> The Owner challenged the occupancy calculations and asked that the egress stairs be removed from the design. However, the stairs were ultimately required to be included in the design because the occupancy calculation provided to the Owner was correct in the first instance. The Owner’s unnecessary and inefficient optioneering is evidenced by the number of meetings held on this particular topic. Four dedicated AOB occupancy meetings were held on July 24, July 31, August 7 and August 10, 2018<sup>97</sup> involving architectural and life safety design experts until the Owner could be convinced by the Developer that there were no other options to reduce egress scope.

---

<sup>93</sup> Please see Attachment 273.

<sup>94</sup> Please see Attachment 274.

<sup>95</sup> Please see Attachment 275.

<sup>96</sup> Please see Attachment 276.

<sup>97</sup> Please see Attachments 276a, 276b, 276c and 276d.

On May 30, 2018, Developer presented during the Architectural/Structural weekly meeting a new layout of the AOB Corridor with two options implementing all the new Change Directive 7 requirements (i.e., occupancy, spaces, and circulation).<sup>98</sup> In this same meeting, the Owner asked Developer to look into the option of moving elevator 11 to the empty shaft located on the northwest side of the AOB Corridor.

On June 6, 2018, during a meeting, Developer provided a survey to the Owner and explained the challenges (Level 4 existing storage and new corridor outside the elevator) of moving the elevator 11 to the empty shaft.<sup>99</sup> The Owner directed Developer to move elevator 11 to the empty shaft. This is another example of the Owner’s optioneering delaying the implementation of the design.

On June 11, 2018, modified AOB layouts were designed by Developer<sup>100</sup> making the walls straight instead of curved, as per Owner instruction<sup>101</sup> in the Executive Design Review meeting on the same day, June 11, 2018.

On June 19, 2018, another new version of the AOB layout was generated by Developer moving the elevator 11 to the empty shaft as per Owner direction.<sup>102</sup>

On July 3, 2018, Developer received additional requirements from the Owner on TSA support layout and program, Level 5 Employee Access Portal, and additional markup on the original layout sent by the Owner as a part of Change Directive 7 on March 28, 2018. Developer provided markups to the Owner for its information on July 3, 2018, as well.<sup>103</sup>

The Owner responded to Developer on July 5, 2018,<sup>104</sup> that the Owner would continue to review Developer’s July 3 markups and requested the occupancy that would have to be in order to maintain the egress stairs as existing in the Terminal and not upsize to the 7 ft. 3 in., which is what had been proposed as of that date as per Owner’s new occupancy requirements.

---

<sup>98</sup> Please see Attachment 277.

<sup>99</sup> Please see Attachment 278.

<sup>100</sup> Please see Attachment 279.

<sup>101</sup> Please see Attachment 486.

<sup>102</sup> Please see Attachment 280.

<sup>103</sup> Please see Attachment 281.

<sup>104</sup> Please see Attachment 282.

On July 18, 2018, Developer made the Owner aware that the 4,000 lb. elevator 11 would not be able to fit in the empty shaft requested by Owner. The Owner suggested Developer to send an RFI asking if Developer can consider a 3,500 lb. elevator instead of 4,000 lb. since this elevator will be used for employees only from Level 4 to Level 6 directly. The Owner recognized that a 4,000 lb. capacity elevator would not fit in the existing AOB shaft and supported Developer's proposal of using a 3,500 lb. elevator. The Owner then requested Developer to proceed with the 3,500 lb. elevator and provide design progress updates through the core design meetings.

Correspondence was issued on July 25, 2018,<sup>105</sup> explaining the timeline of events as set forth above. As explained therein, as of July 25, 2018, the AOB occupancy levels were not agreed with the Owner, and the location and size of egress stairs were not confirmed. This was important at the time because at that point, the AOB Corridor was tied to the critical path and completion of Phase 2 construction works. The Parties agreed, as part of the Combined Phase 1 IFC Submission mitigation agreement, for the AOB Corridor work to be completed in parallel with the works for Phases 3 and 4, thereby removing this work from the critical path (but also meaning that the work was becoming back loaded).

On August 6, 2018, Developer submitted a combined structural IFR structural package for the North Terminal Corridor (including the AOB).<sup>106</sup>

The Owner provided comments to the August 6 AOB structural package on August 16, 2018.<sup>107</sup>

On August 21, 2018, correspondence was issued<sup>108</sup> requesting the Owner's approval of AOB layouts by August 31, 2018, in order to incorporate the Owner comments into the upcoming AOB Corridor North Terminal IFR Package (all design disciplines except structural).

In addition to the August 21, 2018 letter, on August 29, 2019, correspondence was issued<sup>109</sup> attaching the latest FF&E layouts of the tenants and Owner spaces in the AOB Corridor. The August 21

---

<sup>105</sup> Please see Attachment 283.

<sup>106</sup> Please see Attachment 284.

<sup>107</sup> Please see Attachment 285.

<sup>108</sup> Please see Attachment 286.

<sup>109</sup> Please see Attachment 287.

letter confirmed that those layouts are then final, and no more changes would be included as part of the September 27, 2018, AOB 90%-IFR submittal. Any future changes would be addressed in the AOB IFC submittal.

On September 4, 2018, the Owner provided mark-ups to the August 21, 2018 letter.<sup>110</sup> Based on that transmittal, including comments on the AOB layouts, the FF&E drawings, and the FF&E Move Matrix, Developer then planned to submit the AOB Corridor North Terminal IFR Package by October 12, 2018 instead of the previously stated September 27, 2018 date. This date was extended in an attempt to include all comments received on September 4, 2018, from the Owner in the submittal.

Developer submitted the AOB Corridor North Terminal IFC Structural Package on September 6, 2018.

On September 11, 2018, after the IFC package had already been submitted, the Owner issued changes to the Southwest layout space in the AOB Corridor altering the base layout.<sup>111</sup> As shown below, the overlapped new layout from Southwest on top of the base layout, required further coordination.

---

<sup>110</sup> Please see Attachment 288.

<sup>111</sup> Please see Attachment 289.

**REDACTED**

Correspondence was issued on September 19, 2018, explaining the continued saga of this Change Directive 7 and the additional time that was necessary to ensure that the comments received on September 4, 2018 were incorporated into the AOB IFR package.<sup>112</sup>

On October 9, 2018, correspondence was issued<sup>113</sup> to clarify the Owner's response from October 4, 2018, in relation to previous letters of July 25, 2018, and September 19, 2018. In the October 9 letter, it was confirmed that no due diligence activities were required in the AOB Level 6 to complete the design of the AOB Corridor North Terminal IFR Package, and the only delay of the AOB Corridor design was due to the multiple design changes to accommodate all the requirements from Change Directive 7 between March 2018 and August 2018.

On October 12, 2018, the first PCE was finally able to be provided.<sup>114</sup> This PCE could not be provided earlier because Developer did not have the AOB Corridor/North Terminal package "frozen" until October 2018 and, as such, could not provide the information required by the PCE. To emphasize, the PCE was unable to be provided until 7 months after issuance of the Change Directive due to the lack of definition in the Change Directive and the events described above.

The Developer met with the Owner to discuss the PCE on October 18, 2018<sup>115</sup>. In the meeting, the Owner stated they did not agree with the design costs submitted by the Developer's consultants and requested backup for this. This position by the Owner was incorrect as demonstrated below.

On October 22, 2018, the Owner submitted an official response<sup>116</sup> to the PCE with their own analysis of the design costs with their position being that Developer was only owed 15% of the Direct Cost shown in the PCE, which fails to take into account the need for compensation for the work in the 7 months leading up to the PCE (in part). In the Owner's analysis, there were surprisingly unfounded comments regarding their view of the scope. An excerpt from the Owner's response is shown below:

---

<sup>112</sup> Please see Attachment 290.

<sup>113</sup> Please see Attachment 291.

<sup>114</sup> Please see Attachment 292. Additional PCEs were provided on February 15, 2019 and March 15, 2019. Please see Attachments 292a and 292b.

<sup>115</sup> Please see Attachment 292e.

<sup>116</sup> Please see Attachment 292e.

# REDACTED

It is not correct that the architectural program to be performed by Developer's Architect of Record, LVA (noted above) was not increased. The revised layout doubled the anticipated occupancy and added spaces not originally contemplated in the Development Agreement.

On November 02, 2018,<sup>117</sup> the Developer submitted clarifications to the Owner with backup for design hours.

---

<sup>117</sup> Please see Attachment 292d.

On November 26, 2018, correspondence was issued<sup>118</sup> explaining that the architectural demolition AOB package was an additional package that Developer never planned to be broken out but that was now being required to be submitted separately as a result of the level of change that had been directed on this Project. This was one of many efforts to mitigate the time and cost impacts of this Change Directive.

On December 05, 2018, Developer submitted the North Terminal (AOB) IFR Design Package, with Owner comments expected 10 Business Days later on December 19, 2018. The comments were expected 10 days later because that submission was a Submittal Type 1 requiring Owner comment in 10 Business Days as per Section I.8.4 of the Development Agreement.

On December 12, 2018,<sup>119</sup> a response was provided to the Owner's December 5, 2018 transmittal and clarified that the North Terminal (AOB) design and construction was split in two due to constructability and schedule requirements. Due to the construction process, the Developer needed to receive the Owner's approval of the North Terminal architectural demolition package in advance to the rest of the package.

On January 7, 2019, the Owner provided comments on the December 5, 2018 submittal - 20 Business Days later instead of 10 Business Days, per agreement between the parties.

The January 16 Tolling Agreement was executed on January 16, with resolution of the Change Directives expected no later than March 22, 2019.

Correspondence was issued by the Developer on January 25, 2019, with an analysis of the poor quality of the North Terminal AMEP IFR comments received by the Owner on January 07, 2019.<sup>120</sup> This analysis showed that many of the Owner's comments had not been appropriately filtered. 43% of comments were considered not valid (202 of the 442 comments were not considered valid). An excerpt from that letter can be found below.

---

<sup>118</sup> Please see Attachment 293.

<sup>119</sup> Please see Attachment 294.

<sup>120</sup> Please see Attachment 295.

Percent	# of Comments	Category	Explanation
57%	240	Valid	Appropriate comment
4%	16	Out of Scope	Comment not part of GHB contract
0%	0	Different deliverable	Comment applies to future submittal
1%	5	Comment not clear	Comment showing question marks, confusing language, or similar
7%	31	Internal Owner issue	Comment belongs to open Change Directive or that need to be resolved by the Owner prior commenting
7%	31	Owner official direction required	Owner to decide how GHB has to implement the comment
1%	3	Construction	Comment belongs to open Change Directive or that must be resolved by Owner prior to commenting on 60%
7%	30	Just a note	Opinion or number
3%	12	Just a question	Question mark
0%	0	Comments by other (GHB/GHP)	Owner pulled all of GHB and GHP comments from Bluebeam and then included those comments in their own (i.e. there are Ferrovial usernames shown on the Owner comments)
13%	54	Comment not valid	Comments that do not apply or that are not correct

Another PCE for Change Directive 7 was provided on February 15, 2019.<sup>121</sup> This revision included an update to design costs. Yet another revised PCE was delivered on March 15, 2019.<sup>122</sup> This revision was due to the removal of the solid surface from this Change Directive 7 and including it, instead, in Change Directive 22.

On March 20, 2019, the Owner responded and requested that certain items of FF&E be removed from the PCE.<sup>123</sup>

The Change Directive was not resolved as of the March 22 “interim milestone” date provided for in the January 16 Tolling Agreement. The First Extension of Tolling Agreement was executed, extending resolution of the Change Directive until April 15, 2019.

A revised PCE was delivered on March 25, 2019.<sup>124</sup> This was after a request from the Owner to remove the Developers own design costs and move this to a separate Change Directive.

---

<sup>121</sup> Please see Attachment 292a.

<sup>122</sup> Please see Attachment 292b.

<sup>123</sup> Please see Attachment 296.

<sup>124</sup> Please see Attachment 292c.

The Change Directives were not resolved as of April 15, 2019, per the First Extension of Tolling Agreement.

The parties then executed the Second Extension of Tolling Agreement and Mediation Agreement.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

### c. Change Directive 008 – Replace Door Hardware Specifications 087100

The Owner issued Change Directive 8 – “Revised Technical Specification 087100 – Door Hardware” on March 28, 2018 (the “**Change Directive**” or “**Change Directive 8**”).<sup>125</sup>

This Change Directive was issued three months after the 30% design submission for all aspects of the Project on December 21, 2017 and during a time when the 60% Design Development submission for all aspects of the Project was being prepared.

Change Directive 8 directs the Developer to change all the key locks previously contemplated in the original Scope of Work and to replace them with a smart key system (INTELLIKEY system). In particular, in the Change Directive, the Owner directed the Developer to make changes to every single door within the scope of Work for the Project and added additional Scope of Work which entailed adding charging stations required by this new smart key system.

Specifically, Change Directive Change Directive 8 “Revised Technical Specification 087100 – Door Hardware” alters technical specification 087100, which is part of Appendix 7 “D&C Specs Div.8 Openings pages 2437-2868” of the Technical Requirements.

When initially issued, Change Directive 8 was provided without a clear identification of the changes required and without a clear definition of the Owner’s requirements regarding the impacted doors, the number of cards needed in the future and the number of charging stations required to be included for the new system. It has taken the Developer several months and various meetings to reach resolution with the Owner regarding the scope of Work required by this Change Directive and clarity regarding certain of the requirements still remains outstanding.

This Change Directive 8 requires a change in the door hardware specifications to allow for the doors to use the smart INTELLIKEY system, which in turn, changes the cores, the keys, and charging stations. This Change Directive affects all areas of the Project and every single door within the base scope of Work. Further, this Change Directive affects all previously submitted design submissions, with an

---

<sup>125</sup> Please see Attachment 63.

immediate impact on Phase 1, as the construction permits for Phase 1 had already been received in November 2018 as a result of the Combined Phase 1 IFC Submission (as explained in more detail in Section I, above).

The sections of the original specification modified by Change Directive 8 are:

- Paragraph 1.2 B - Removed related sections 064023, 081216, 081433, 084126 and 084229 from the Technical Requirements.
- Paragraph 1.5 H-1 was revised to “Door Hardware Schedule, detailed in Article 3.9, Door Hardware Schedule, prepared by or under the supervision of Installer...” from “prepared by or under the supervision of Installer...”.
- Owner was changed to DEN in a number of places.
- Paragraph 1.5 H-2 was revised to “supervision of DEN, detailing final keying instructions for locks” from “supervision of installer, detailing-final keying instructions for locks”.
- Paragraph 1.7 A added sentence “[Keying] schedule to be provided directly to DEN Lock Shop”.
- Paragraph 1.10 I was revised to “Keying Conference: Keying Conference will be conducted internally by DEN Lock Shop. Additional entities will be contacted directly by Lock Shop as needed. Incorporate keying conference decisions into final keying schedule after reviewing door hardware keying system including, but not limited to, the following.” from “Keying Conference: Conduct conference at Project site to comply with requirements in Section 013100 “Project Management and Coordination.” In addition to Owner, Construction Manager, Contractor, and Architect, conference participants shall also include Installer's Architectural Hardware Consultant and Owner's security consultant. Incorporate keying conference decisions into final keying schedule after reviewing door hardware keying system including, but not limited to, the following.”.
- Paragraph 2.6 H-1.a revised the manufacturer of the mortise locks to Sargent 8200 series in lieu of Best Access Systems; Division of Stanley Security Solutions, Inc.
- Paragraph 2.9 A-1.a revised the manufacturer of the keypad locksets to Alarm Lock Trilogy series in lieu of Best Access Systems EZ series.
- Paragraph 2.19 B was revised to “Medeco XT Access Control: Where indicated in schedule this contractor shall furnish Medeco XT Access Control consisting of Medeco XT lock cores. Each controller can operate as an independent, stand-alone unit. The key itself makes all access control decisions based on previous programming. A typical installation consists of removing the current mechanical core and inserting the Medeco XT core. The XT key carries the access control and personal identity data of the assigned key holder. The XT cannot be read or duplicated except by authorized personnel equipped with site-specific XT equipment.” from paragraph 2.18 B or “INTELLIKEY Access Control: Where indicated in schedule this contractor shall furnish INTELLIKEY Access Control consisting of ACS4000 Intelligent Lock Controller that consists of a circuit board with a microprocessor and associated circuitry. The

miniature computer reads access information from an Intelligent Key, compares this information with the information programmed into the controller's memory, and determines if the key should be granted access. Each controller can operate as an independent, stand-alone unit. The controller right at the point of access makes all access control decisions. The controller's memory shall retain programming and audit trail information, even without batteries, for up to 100 years. The electronic controller is designed to work with any INTELLIKEY electronic cylinder. A typical installation consists of mounting the INTELLIKEY controller using an External slimline housing. The Intelligent Key carries the access control and personal identity data of the assigned keyholder. The Intelligent Key cannot be read or duplicated except by authorized personnel equipped with site-specific INTELLIKEY equipment. The Electronic Cylinder provides the link between the INTELLIKEY controller and key. INTELLIKEY controllers and keys communicate through an invisible, encrypted infrared link provided by the cylinder. INTELLIKEY cylinders are available as replacements for the standard cylinder types, including mortise and rim. The electronic cylinder may be configured for rotating operation. The Rotating Cylinder is used in conjunction with new or existing mechanical locking devices where rotation of the cylinder retracts or throws a latch bolt.”

- Paragraph 2.20 A was revised to 2 keys per lock from paragraph 2.19 A 3 keys per lock.
- Paragraph 2.20 C “Key Systems” was revised to “Cylinders shall be 7-pin interchangeable core except where electronic XT core required.” from paragraph 2.19 C “Cylinders shall be a 7 pin interchangeable core. Facility locksmith shall determine keyway of cylinders.”
- Paragraph 2.20 E-1 “Key Systems” changed the acceptable manufacturer to Medeco from Best Access Systems.
- Paragraph 2.24 A “Keying” was revised by deleting items 1 No Master Key System, 2 Master Key System and 3 Grand Master Key System from previous paragraph 2.23 A.
- Paragraph 2.31 F “Product handling” was added stating “Manufacturer to dropship cores and keys directly to DEN Lock Shop.”

In addition, a number of revisions were made to the paragraph numbering and formatting and no mark-up was provided identifying the changes to the above Specifications as compared to the Specifications included as part of the Contract Documents, making more difficult to identify the changes being required.

After the Change Directive was received, the Owner and the Developer started conversations about the implementation of this Change Directive during the weekly Change Management Meetings. The Developer provided weekly updates about the progress of the work implementing the Change Directive and engaged a supplier to identify the implications of the change. In addition, as part of these Change

Management Meetings it was discussed that the Developer was going to contact two different companies for pricing purposes.

After identifying the changes requested by this Change Directive in the Specifications and working with the different suppliers, the Developer was finally able to provide a price per unit on May 22, 2018. The Developer was still not able to provide a PCE because a schedule for the doors and hardware was needed and still had not been agreed to with the Owner.

Finally, on June 4, 2018, the Developer was able to submit a PCE for Change Directive 8.<sup>126</sup> The Developer explained therein that in order to provide a final pricing for the card reader change in the hardware specification required by Change Directive 8, the number of charging stations required by the Owner was needed as well as the number of keys and/or cards that were needed by the Owner.

Conversations trying to close the remaining outstanding questions about the number of charging station, keys and/or cards required by the Owner continued during many Change Management weekly meetings. The Developer had various discussions with the Owner trying to understand the scope of work required by the Change Directive in order to provide an accurate PCE.

In order to move forward, during the Change Management Meetings on July 2, 2018 and July 16, 2018<sup>127</sup>, the Developer agreed with the Owner to prepare and provide a ROM (rough order of magnitude) pricing based upon development of a draft door and hardware schedule. Developer would utilize the 60% Design Development package to develop a ROM cost projection and include a door schedule.

During the Change Management Meeting on August 20, 2018,<sup>128</sup> the Owner agreed that it would review and comment on the Combined Phase 1 IFC Submission door schedule. After receipt of Owner's comments, Developer would pursue pricing based on the door schedule.<sup>129</sup>

---

<sup>126</sup> Please see Attachment 298.

<sup>127</sup> Please see Attachments 218 and 220.

<sup>128</sup> Please see Attachment 224.

<sup>129</sup> Id.

On August 27, 2018, Owner reported that Owner's locksmith was reviewing submitted unit pricing to see if it conforms to the pricing the Owner has been seeing for these hardware products.<sup>130</sup> In addition, the Owner agreed to mark-up the hardware schedule and review historical pricing for these hardware products on September 10, 2018.<sup>131</sup>

The Owner agreed on September 17, 2018, after the original discussion held on August 20, 2018, to review and comment on Phase 1 hardware schedule and provide unit pricing for the ongoing hardware conversions in other parts of the airport. Also, the Owner agreed to provide the number of INTELLIKEY keys and charging stations to be provided under this project.<sup>132</sup>

The Owner provided the historical unit cost pricing to the Developer on September 24, 2018, but was waiting for the key and charger counts. It was discussed between the Parties that this Change Directive could be resolved in phases.<sup>133</sup>

Due to the lack of progress and the information missing from the Owner in terms of stations, keys and cards required by the Owner, on October 1, 2018 the Developer and the Owner agreed that Owner had to provide formal direction on how to proceed.<sup>134</sup>

Once again, on October 15, 2018, it was discussed again that Owner had to provide key and charger count with the goal to resolve this Change Directive in phases. Formal direction was expected to come from the Owner.<sup>135</sup>

On October 29, 2018, the Owner updated the Developer stating that details on the number of keys and charging stations would be provided in early November.<sup>136</sup>

---

<sup>130</sup> Please see Attachment 225.

<sup>131</sup> Please see Attachment 227.

<sup>132</sup> Please see Attachment 228.

<sup>133</sup> Please see Attachment 229.

<sup>134</sup> Please see Attachment 230.

<sup>135</sup> Please see Attachment 231.

<sup>136</sup> Please see Attachment 233.

The details on the number of keys and charging stations was not received in early November so the Developer requested an update from the Owner about the expected date. On November 5, 2018, the Owner stated that Owner's door security person was back from vacation that week.<sup>137</sup>

It was reiterated on November 12, 2018 that the Developer was still waiting for the information missing from the Owner and that a follow up with door security person was need to provide the numbers of keys and charging stations at least for Phase 1 of the Project.<sup>138</sup>

During the weekly Change Management Meeting on November 19, 2018, it was discussed again that the Owner had to respond and provide the numbers needed for Phase 1.<sup>139</sup>

The Owner informed on November 26, 2018, that a meeting was arranged locksmith for later that week to discuss the outstanding information.<sup>140</sup>

On January 14, 2019, the Owner informed that was planning to have another meeting with locksmith and that it was scheduled for that week.<sup>141</sup>

The January 16 Tolling Agreement was executed on January 16, 2019, contemplating resolution of the Change Directives by March 22, 2019.

Since the Owner was not taking any decision or providing any new information on this Change Directive since September 24, 2018, even though on almost every weekly Change Management Meeting was stating that details on key and charger count would be provided, Developer decided to provide a revised PCE with pricing with various assumptions regarding the number of keys and chargers on February 21, 2019.<sup>142</sup>

---

<sup>137</sup> Please see Attachment 234.

<sup>138</sup> Please see Attachment 235.

<sup>139</sup> Please see Attachment 236.

<sup>140</sup> Please see Attachment 237.

<sup>141</sup> Please see Attachment 243.

<sup>142</sup> Please see Attachment 299.

Change Directive 8 among other Change Directives were not resolved as of March 22, 2019. So, the First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

This Change Directive continued unresolved as of April 15, 2019, and the Parties executed the Second Extension of Tolling Agreement and Mediation Agreement.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

#### **d. Change Directive 009 – TSA Screening Area**

The Developer received Change Directive 9 on May 22, 2018 (the “**Change Directive**” or “**Change Directive 9**”).<sup>143</sup>

Change Directive 9 directs the Developer to make changes to the TSA security screening checkpoint (SSCP) that deviated from the previously agreed Scope of Work for the SSCP. In particular, in the Change Directive, the Owner directed the Developer to make changes to the East and West security checkpoints located in MOD1, level 6, gridlines N21 to N31. The checkpoint spaces impacted were broken down into:

- Irregular operations area.
- Vestibules.
- Automatic screening lanes (ASL).
- TSA support spaces.

Below is an image highlighting the TSA security screening checkpoint (SSCP) affected by Change Directive 9.

---

<sup>143</sup> Please see Attachment 68.

**REDACTED**

As is further described below, the original Change Directive 9 was very vague and conceptual in nature (and impossible to actually be implemented by the Developer). In particular, such Change Directive stated: “the following items are conceptual in nature and will require design development to fully define the items.”

In addition, the Change Directive included a “slide deck for programming elements presented to GHP (for background information purposes).” This slide deck provided merely consisted of a sketch mark-up of certain areas adding dimensions and a few non-detailed notes:

**REDACTED**

In addition, as is further described below, it has taken several months and many meetings to reach resolution with the Owner regarding the scope of Work required by this Change Directive.

As a result of the prolonged meeting process with the Owner, Change Directive 9 requires the Developer to make changes that affect the entire design and construction work for the TSA screening area located in Level 6 of the Terminal. The changes required affect the layout of the spaces (and allocation of space for various uses within such layout), impose additional requirements in respect of the finishes in such spaces, and require updates to the agreed upon electrical systems. In addition to the wide scope of changes required, the Developer also had to undertake additional analysis of structural elements and DBC compliance. These changes required the redesign of the entire TSA area located in Level 6 of the Terminal. In particular, the redesign must take into account the following changes per discipline:

- Architectural – revision of layouts, design coordination with other disciplines, coordination meeting presentations and analysis of program information received.
- MEP – update of all systems based on new layouts and integration of all new equipment.
- Structural – analysis of loading and vibration for all new proposed TSA equipment.

A summary of the changes requested against the original scope is shown in the table below.

**REDACTED**

**REDACTED**

**REDACTED**

# REDACTED

Prior to the Change Directive issuance, updated requirements for the TSA screening areas were first discussed between the Owner and the Developer. As a consequence of such discussion, the Owner proposed a two-day workshop, to be held on January 23-24, 2018, at which TSA headquarter staff would fly to Denver and work with the design teams to ensure the Developer's current design met the TSA requirements. The Developer did not anticipate that the workshop would require scope changes, as scope changes were not discussed or mentioned previously in any meeting with the Owner.

The Developer worked with the Owner to develop an agenda for the two days<sup>144</sup> and made available all required Developer design discipline heads along with its design consultant as detailed in the meeting minutes<sup>145</sup>.

However, due to the federal governmental shutdown (as noted in the minutes from the applicable issues log meeting,<sup>146</sup> excerpt shown below), the meeting was moved to February 06-07, 2018.

---

<sup>144</sup> Please see Attachment 300a.

<sup>145</sup> Please see Attachment 300.

<sup>146</sup> Please see Attachment 300b.

TSA input required to ensure design proposals deliver end-user requirements.	TSA workshop on 23-24 Jan 2018 cancelled due to governmental shutdown.	DEN to advise of alternative date for workshop.
--	--	---

The first workshop day finally happened on February 6, 2018 and consisted of presentations and discussions with the Owner and the TSA. It is important to note that in accordance with the Agreement, the Owner is responsible for managing the relationship with TSA and for any coordination with the TSA, and Developer was in attendance at such meetings for informational purposes only. Day two of the workshop on February 7, 2018 and involved two groups working on specific aspects of the checkpoint design.

During those sessions, the Owner also provided the Developer with, on a “for information only” basis, several TSA Guidelines not originally listed in the Agreement. Based on subsequent conversations at the same meeting, it was clear at this point that in order for the modifications to be made, an Owner Change would be required. Specific actions for the Owner were identified in minutes of meeting from February 8, 2018,<sup>147</sup> and are shown below to provide an order of magnitude for the changes required.

Action	By Whom	By When
01 General design: Fire Marshall to be consulted on the ongoing design.	DEN (SW)	Feb 22, 2018
02 Egress: Egress from the security space to be analyzed in more detail. GHB state that PDA design is to code.	DEN (SW)	Feb 22, 2018
06 Screens: Concern over glare on screens to be addressed during design. Recommended by TSA that screens are used for passenger information. Instruction required if this is to be included.	DEN (SW)	TBC
07 Outlets: Convenience outlets required often to enable cleaning and for third parties. Instruction required.	DEN (SW)	Feb 22, 2018
08 Cleaning: Cleaning storage cupboard required. Instruction required.	DEN (SW)	Feb 22, 2018
09 Screening Equipment: Templates and schedules provided by TSA for Vanderlande. To be instructed by DEN to GHB.	DEN (SW)	Feb 22, 2018
10 Screening Layout: TSA (Dale Mason) available to provide typical layout for screening area. Proposal is to redesign the screening area using the (3) provided equipment types to ensure future equipment will fit – instruction required.	DEN (SW)	Feb 22, 2018

<sup>147</sup> Please see Attachment 300.

Action		By Whom	By When
12	Emergency Power: TSA recommends that some lanes be on backup power to allow for operation at all times. DEN to advise.	DEN (SW)	Feb 22, 2018
13	Seating: Recommended by to draw in seating elements for space allocation purposes. Instruction required.	DEN (SW)	Feb 22, 2018
14	Glass Walls: TSA (Larry) to evaluate the glass system where it transitions from sterile to non-sterile.	TSA (Larry)	Feb 22, 2018
15	K9 & Pet Interaction: Pets will distract K9 operations. Currently if K9 is operating on North and South security, pets are diverted to the A bridge. In new scenario this is not possible. Solution: segregated corridor required for pets, ADA, families and Quad S passengers (high risk). The Southernmost sally port would be designated for this purpose. (See sketch 1)	DEN (SW)	Feb 22, 2018
16	K9 Lane: Handlers require min 4ft width and 25ft length lane. Flooring must not be untreated terrazzo (slippery) or too rough. DEN (Amy) has suggestion for material coating to use.	DEN (AB)	Feb 22, 2018
18	LEO Podium: Agreed to position LEO podium (14" height in contract) behind elevators (See sketch 2). DEN to confirm program requirements of this podium. Gun safe to be located here. Elevator adjacent to podium to have opaque glass at rear.	DEN (SW)	Feb 22, 2018
19	TSA Podiums: Agreed to change southernmost screening room into raised TSA podium and to create new TSA podium and new TSA screening room where passengers enter the queue (See sketch 1). DEN to instruct GHB of this change.	DEN (SW)	Feb 22, 2018
20	KCM Access Point: Program for southern KCM access defined during the meeting to include KCM and LEO doors (See sketch 1). To be instructed to GHB.	DEN (SW)	Feb 22, 2018
21	Paramedics: Route for Paramedics to be defined. Exit route for Paramedics from AOB corridor to also be defined.	DEN (SW)	Feb 22, 2018
23	Sally Port Design: Potential screen to identify sally port use Entrance doors offset and lockable Glass between ports translucent. Additional surveillance (CCTV) could be provided. Suggestion that glass could be bullet / blast resistant to some degree to be reviewed by DEN. This could alter Wi-Fi / comms design. Large sliding door between ports at or before TDC to allow for potential future biometrics watch Rear opening to be made wider and not secure (sally ports can only be secured from glass walls), allowing for more visibility Potential for bullet resistant glass – DEN to advise TDC to be located 8ft from back wall Door in rear wall to enable emergency escape for AT operators – DEN to advise TSA recommend music, design, colors and openness to improve passenger experience Master podium with few seats to be provided instead of the standard one podium for each 4 lanes. Additional secondary podiums can be provided. Sally port will have doors next to the alternate partitions	DEN (SW)	Feb 22, 2018

<b>Action</b>		<b>By Whom</b>	<b>By When</b>
24	Security Lane Wall: DEN security recommend blast and bullet resistance. DEN to advise. Wall to be 8ft high.	DEN (SW)	Feb 22, 2018
25	CLEAR: Potential option for CLEAR queuing identified (See sketch 3). DEN to advise.	DEN (SW)	Feb 22, 2018
26	Pre-Check: No clear direction from the workshop. DEN to arrange internal breakout sessions to discuss and agree a way forward.	DEN (SW)	Feb 22, 2018
27	Program Requirements: TSA Extra (3000SF) to be defined in DEN internal discussions. Some discussion around having a breakroom, remote monitoring and OLC lab (training). Two 'IT support' offices provided for one IT support. DEN to advise if this is to change.	DEN (SW)	Feb 22, 2018

The additional image below was also received during the workshop and incorporated into the meeting minutes. This demonstrates the level of changes being discussed at such workshop.

**REDACTED**

Developer issued meeting minutes on February 13, 2018,<sup>148</sup> and arranged a follow up session on February 21, 2018, including to discuss Developer's concern regarding how the Owner intended to instruct the Developer to implement these changes. An excerpt from the email issuance<sup>149</sup> of the minutes to the Owner is shown below:

Good morning all,

Please see attached minutes from the TSA workshop day 2. Please let me know if you require any amendments.

I think it would be useful to discuss what needs to be instructed and how this is to be achieved at our meeting on Feb 21<sup>st</sup>. GHB are awaiting formal DEN decision on TSA design items prior to moving forward with design changes or additions.

Kind regards,

The February 21, 2018 meeting referenced in the above excerpt was subsequently moved to March 5, 2018 and then, at the request of the Owner, completely cancelled two days before the meeting (on March 3, 2018) so that the Owner had time to prepare formal instruction regarding its required changes. Instead of issuing an Owner Change to the Developer, the Owner issued a 'Design Clarification' document from the TSA Workshop on February 21, 2018,<sup>150</sup> which included a number of design changes stating the following: "If Design Clarification will result in a change to the project time or value, follow DA process."

The Owner intended to change the scope of work with this document without following the requirements of the Agreement. The Agreement change process in Article 12 thereof requires that an Owner Change must be issued for any changes to the scope of Work that originates from a change in Owner requirements (excerpt shown below).

D&C Work, deletions to scope of the O&M Services, and changes to requirements applicable to the Work, in each case as it may direct in its sole discretion (each, an "Owner Change") in

---

<sup>148</sup> Please see Attachment 300.

<sup>149</sup> Please see Attachment 300c.

<sup>150</sup> Please see Attachment 300d.

During a meeting on April 13, 2018, the Owner presented a summary of the TSA area information received per the February 6<sup>th</sup> and 7<sup>th</sup> meetings.<sup>151</sup> Developer advised the Owner at such meeting that an Owner Change would be required due to the impact expected on the design.

Finally, and almost four months after the TSA workshop, on May 22, 2018, the Owner issued Change Directive 9.

In addition, on May 30, 2018, the Owner issued correspondence<sup>152</sup> with the following guidelines as part of Change Directive 9 but did not provide any guidance on how they wanted them to be used:

- 0-1 CDG REV 6.1\_C1\_20160912 "Checkpoint Design Guide"
- OSC-16-256 - ITF Innovation and Concept Supplemental Information Guide
- TSA Space Management Guidelines 1.01
- Electrical and Data\_R16\_20171027
- ALS CT OEM Comparison Layout 120417r<sup>153</sup>

As it was still unclear for the Developer how to implement the changes because of the lack of information, further discussions and work regarding Change Directive 9 continued at the weekly Change Management Meetings, excerpts from minutes on July 2, 2018<sup>154</sup> and July 30, 2018<sup>155</sup> (L-R respectively), show this progress.

<p>! Meeting held 04.13.18 to discuss. Waiting on CD. Ongoing. 05.14.18 CD009 is forthcoming. 05.21.18 Received on 05.22.18. Need to set up a meeting to review. 05.29.18 Meeting held. This scope is in Phase 3 and is not a high priority for pricing. 06.04.18 Do not want to affect design team's efforts on the next milestone submittal. This work is in Phase 3. need to evaluate the structural impact of TSA equipment. Pricing time extension forthcoming. 06.18.18 GHB submitted pricing time extension request with proposal to meet with GHP &amp; DEN to agree on time frame. <b>07.02.18 GHB will review CD narrative again in order to develop a scope of work. Per DEN, do not include EDRs 2 and 3 in the CD009 pricing.</b></p>	<p>07.02.18 GHB will review CD narrative again in order to develop a scope of work. Per DEN, do not include EDRs 2 and 3 in the CD009 pricing. 07.10.18 GHB issued a proposed design schedule for CD 9 on 7/10/2018. Larry asked GHB to identify the issues that are missing to facilitate moving this CD forward. 07.16.18 Larry spoke with Fernando and acknowledged the revised CD 009 schedule will govern. Philip asked that GHB clarify the reason for the slippage in the 90% design in the June update from July 27 to September 10. <b>07.24.18 Coordination meeting to discuss equipment configuration, design schedule, coiling doors, and strucutral implications</b></p>
--	---

#### Change Directive 9 – Weekly Change Management Meeting excerpts

<sup>151</sup> Please see Attachment 301.

<sup>152</sup> Please see Attachments 303, 303a, 303b, 303c and 303d.

<sup>153</sup> Please see Attachments 303, 303a, 303b, 303c and 303d.

<sup>154</sup> Please see Attachment 218.

<sup>155</sup> Please see Attachment 221.

Developer participated in a meeting with the Owner on July 24, 2018, to specifically discuss Change Directive 9 scope and schedule.<sup>156</sup> At the meeting, the Developer discussed some of its queries with regard to the Change Directive's scope.

As the changes requested by the Owner were not completely defined and clear, a proposal for a schedule of follow-up meetings was submitted by the Developer on August 15, 2018<sup>157</sup>, with the intention of developing the construction documents for the TSA Screening Area during such meetings. The Developer set these meetings as further scope definition was required from the Owner and they were scheduled every two weeks with a specific agenda of items to be discussed in each meeting and the process to close the design.

Meeting	Date
Review of Basis of Design, Concepts - Structural to review ASL load checks per document "ALS CT OEM Comparison Layout 120417r"	August 22, 2018
Basis of Design, Concepts, draft layout updates. DEN to provide TSA and equipment guidelines update. Structural to update load checks	September 5, 2018
Design Development. Ongoing Draft layout. ROM cost and Schedule	September 19, 2018
Drawing review update. MEP concepts update as per TSA updated equipment information. Structural inputs. BIM spaces review	October 3, 2018
Spatial architectural layout and main systems frozen for MPE/Structures to start. DEN's update of Screening Line equipment (specs?)	October 17, 2018
Review of the DD informal information up to date. DD BIM/render update. Finishes/systems/FFE/structural design concepts frozen for 90% submittal.	October 31, 2018
Last Responsible moment (LRM) for DEN to update of Screening Line equipment (Manufacturer selected and Specs)	November 14, 2018
Layout update with last comments from TSA/DEN	November 28, 2018
90% All disciplines submittal	December 21, 2018

On August 22, 2018, Developer arranged a meeting with the Owner concerning Change Directive 9.<sup>158</sup> At the meeting, the Developer presented proposed architectural layouts, electrical power proposals and a structural analysis of the Advanced Imaging Technology (AIT) equipment (used to scan passengers

---

<sup>156</sup> Please see Attachment 304.

<sup>157</sup> Please see Attachments 304a.

<sup>158</sup> Please see Attachments 305, 305a, 305b and 305c.

at checkpoints) – all in line with the Developers proposed meeting schedule. At the meeting, 13 action items affecting the design progression were assigned to the Owner.

On August 30, 2018, the Owner issued correspondence with the Owner responses to the earlier TSA Design Review Meeting held on August 22, 2018. This correspondence closed four of the 13 previous actions in order to prepare the next meeting scheduled for September 5, 2018.<sup>159</sup>

Developer arranged the second meeting with the Owner on September 05, 2018.<sup>160</sup> At this meeting, the Developer presented further design progression in the form of architectural renderings, provided the Owner with various options for moving the electrical rooms and provided a comparison of the ‘SSCP estimated vs allocated power analyses. One additional action for the Owner was closed and one added at this meeting.

Developer participated in the third meeting with the Owner on September 19, 2018<sup>161</sup>. At this meeting, the Developer presented further design progression in the form of architectural renderings and plans including for a podium, screening rooms, Known Crew Member (KCM) access point to the secure area for airline staff, and revised support space plans. The Developer also provided further analysis and options for moving the electrical rooms. Four additional actions for the Owner affecting the design were added at this meeting, no previous actions were closed.

On October 03, 2018, Developer participated in the fourth meeting with the Owner concerning Change Directive 9.<sup>162</sup> At this meeting, the Developer presented a plan for the integration of grease exhausts, options for a new slab extension and further electrical panel coordination. Also reviewed were further support space layouts and updates to the boundary wall from the Executive Design Review process in an attempt to close the design and give the Owner options to make decisions. One additional action for the Owner affecting the design was added at this meeting, one previous action was closed.

---

<sup>159</sup> Please see Attachment 306.

<sup>160</sup> Please see Attachment 306a.

<sup>161</sup> Please see Attachments 306b, 306c

<sup>162</sup> Please see Attachment 307

Developer created a draft PCE for Change Directive 9 on October 10, 2018<sup>163</sup> with the information known at that time. As the scope needed further refinement, it was not officially issued and it was presented and discussed with the Owner in the weekly Change Management Meeting on October 15, 2018<sup>164</sup>. It was agreed between the Parties that an improvement of the scope definition was required before issuing the PCE formally. An excerpt from this meeting is shown below:

10.10.18 GHP will not be forwarding PCE letter to DEN. Instead a meeting has been called btwn [sic] GHB, GHP, and DEN to discuss in more detail.

Developer participated in yet another meeting with the Owner concerning this Change Directive on October 16, 2018. The meeting was held to review the duress alarm strategy and the Category 6 (data cable) distance limitation due to the TSA Screening Space configuration.<sup>165</sup>

Per the original schedule of meetings, the architectural layout and main systems for the design bulletin should have been frozen on October 17, 2018. Additionally, the Owner should have provided its updated screening line equipment specifications, so the Developer could continue with the TSA Area design. All the items were still pending as of such date.

Another meeting concerning Change Directive 9 was held on October 31, 2018.<sup>166</sup> At this meeting the design was reviewed to re-route the kitchen exhausts from Level 5, and the Parties undertook further analysis of the electrical equipment placement and the overall checkpoint layout. In the same meeting, the Owner directed the Developer to proceed with the design and implementation of a 30 ft. sliding door system in the boundary wall – something that was later removed from the scope by the Owner. Two additional actions for the Owner affecting the design were added at this meeting, five previous actions were closed.

---

<sup>163</sup> Please see Attachment 308

<sup>164</sup> Please see Attachment 231.

<sup>165</sup> Please see Attachment 309, 309a, 309b, 309c, 309d and 309e.

<sup>166</sup> Please see Attachment 310.

The Owner finally provided the Screening Lane equipment update and new TSA Guidelines on November 19, 2018 instead of the October 17, 2018 deadline required by the design schedule.<sup>167</sup> These equipment and TSA Guidelines were required to be implemented as part of Change Directive 9:

- ASL Lanes Level 6 Concept 110218\_presentation
- Electrical Diagram\_R0\_AT-CT\_20181116
- Electrical Diagram\_R0\_ASL\_20181116

On November 21, 2018<sup>168</sup>, the Developer sent the Owner's executive a presentation detailing the outstanding items that were preventing the Developer from making progress on the TSA design, for use in executive discussions. The aim of this was to ensure the Owner's leadership were fully aware of the lack of design definition being provided by their team. The main areas of concern raised in the presentation were:

- August 15, 2018 design schedule had been met by the Developer but information from the Owner was still not forthcoming. Developer requested to know if the Owner wanted to extend this schedule.
- Concern over a new 20ft sliding wall requested by the Owner.
- Lack of confirmation on the Owners preferred support space layout.
- New issues with the K9 ventilation request from the Owner and queuing layouts.

On November 28, 2018, the Developer met with the Owner to review the Electrical Load and Circuit Analysis prepared by Sener Swanson Rink ("SSR").<sup>169</sup> The Developer also presented possible options for how the space could be operated, something that was still not developed by the Owner. This was important as it greatly affects what needs to be provided for in the layout. The Developer also presented further support space options, KCM entrance options and further analysis of the sliding door. Five additional actions for the Owner affecting the design were added at this meeting, two previous actions were closed.

---

<sup>167</sup> Please see Attachment 312, 312a and 312b.

<sup>168</sup> Please see Attachment 312c,

<sup>169</sup> Please see Attachment 313, 313a, 313b, 313c and 313d.

The Owner agreed via email on December 4, 2018, to the Electrical Load and Circuit Analysis reflected in the information Developer had provided as of that date.<sup>170</sup>

On December 14, 2018, Developer sent the Owner's executive a list of the outstanding items that were preventing the Developer from making progress on the TSA design. The table shared with the Owner is shown below, highlighting that a number of areas were of concern.

Issue	Action	Importance	GHB
Support Space Layout	LVA have worked on two of three DEN's options. DEN to respond by 11/29 AM. <a href="#">Update 12/13: GHB layout has cannot fit requested number of desks. DEN request alterations to Comms room. LVA to update.</a>	High	DEN's preferred option is number 1 (as per Scott S. Nov. 29 email). MEP and FF&E within the spaces will not be fully designed due to this late decision.
Perimeter Wall Design	DEN confirm they wish GHB to continue with sliding door option. Sliding door not yet reviewed by CEO. <a href="#">Update 12/13: No update.</a>	High	Fixed Wall in the 90%. Sliding doors to be further discussed. Option preferred from DEN's Worldport team automatic, with frames and a channel in the floor.
Oversize ASL Lanes	DEN to confirm model of oversize ASL lanes (4) in total. This could change the Southern wall position. <a href="#">Update 12/13: No update.</a>	High	Pending decision from DEN. Layout as per the WIP presented during the TSA CD9 meetings.
Materna and Clear Kiosks	DEN to provide locations for each for power / data coordination <a href="#">Update 12/13: No update.</a>	High	In the 90% we can propose a location. Electrical and data circuiting will not be incorporated until final position.
New Level 5 Electrical Rooms	DEN to confirm Eastern Electrical Room layout is acceptable <a href="#">Update 12/13: DEN confirm layout is acceptable.</a>	Closed	Pending. In the 90% Layout proposal as per the WIP presented during the TSA CD9 meetings.
Confirmation of all TSA equipment	GHB require baseline types of equipment to design from. i.e. Model number of ASL, AIT, CT...etc. <a href="#">Update 12/13: No update.</a>	High	Pending. DEN's ASL preference is Scarabee. The 90% will not include circuiting because there is no final selection of the equipment. A spreadsheet with the power consumption estimate to be incorporated. DEN requested power for two body scanners per lane instead of 1 and 1 metal detector.
LEO / KCM Entrance and Podium	DEN to confirm access control requirements for KCM and LEO. <a href="#">Update 12/13: KCM to have no</a>	Medium	In 90% Two doors (one wider). LEO door with access control.

<sup>170</sup> Please see Attachment 314 and 314a.

Issue	Action	Importance	GHB
	access control (guarded), LEO to have card reader DEN to discuss podium design and ADA requirements with TSA. <a href="#">Update 12/13: No update.</a>	High	Pending final Podium design. No ADA ramp in 90%.
Precheck and UA Global Services entrance	DEN instructed GHB to close this entrance on 11/28/18 with new sliding door <a href="#">Update 12/13: No update.</a>	Medium	It was agreed to maintain in the 90% the entrance in the PDA location. New sliding door will not be incorporated until final agreement on the EDR2 and sliding door frame.
K9 Flooring Type	DEN requested samples from GHB. DEN want to run a trial. <a href="#">Update 12/13: Awaiting samples from GHB.</a>	Low	The area to be identified in the 90% submittal but not the material (TBD latter).
K9 Stanchion System	DEN request information on a stanchion system. <a href="#">Update 12/13: System research sent to DEN. No decision on fixed / moveable.</a>	Low	Not to be included in the 90%. Needed final selection of fixed vs movable.
K9 HVAC	DEN request solution for managing airflow <a href="#">Update 12/13: No update. With GHB.</a>	Low	Airflow opposite to K9 direction. Probably a return grille needed in the TSA Podium wall to help that flow will be included.
CAT6 Cable Color	DEN to confirm color requirements for CAT6 cabling in TSA space <a href="#">Update 12/13: No update.</a>	Low	Pending. Not in the 90%

On December 21, 2018, Developer submitted the Phase 3 90% submittal to the Owner including the TSA Area affected by this Change Directive 9.<sup>171</sup> On the same day, the Developer sent correspondence to the Owner describing which elements were not included in the 90% submittal, including Change Directive 9, as the Developer had not received approval from the Owner for the conceptual Change Directive 9 layout and because at this point in time it was not possible due to the lack of definition from the Owner.<sup>172</sup> Additionally, comments were not provided by the Owner to these submissions in accordance with the Agreement. Instead, the Owner attempted to reject the submissions based on the Technical

---

<sup>171</sup> Please see Attachment 315.

<sup>172</sup> Please see Attachment 315b.

Requirements Appendix 2-C: Construction Document Quality Checklist<sup>173</sup>. The Developer provided a response on February 21, 2019, clarifying that the packages submitted were compliant and should have already been reviewed by the Owner.<sup>174</sup>

The January 16 Tolling Agreement was executed on January 16, 2019, wherein the Change Directives (including this Change Directive 9) were to be resolved no later than March 22, 2019.

The next day, on January 17, 2019, Developer participated in a meeting with the Owner concerning Change Directive 9.<sup>175</sup> At this meeting, the team provided options to the Owner for a new southern window in the support space, updated KCM door design renders, access doors on the perimeter walls, and access doors for precheck / clear.

At such time, items requiring design development in respect of Change Directive 9 Rev.1 had expanded and now included:

- 012819 TSA L6 LAYOUT OPTIONS.pdf received updating the TSA Screening Area L6 layout<sup>176</sup>
- Modifications to the Irregular Operations Area
- Modifications to the Vestibule Area
- Modifications to the TSA Support Spaces
- Upgrades included as "Additional items to be incorporated in design"

On February 8, 2019, without prior notice, the Owner issued another update to Change Directive 9<sup>177</sup> which completely altered many of the items developed over the prior 9 months of meetings.

The changes detailed in the update were as follows:

- "South entry (closest to balcony) to TSA Pre-Vestibule circulation with angled wall for better flow. Opening width approx. 30'-0" W
- 4' H stanchions with opaque panels that are flush with the floor (no gap) in south end pre-vestibule circulation to separate Standard passenger from Pre-Check passengers. These panels shall also be used to designate the 12'W x 60'L K9 Operations working area

---

<sup>173</sup> Please see Attachment 315c.

<sup>174</sup> Please see Attachment 315a.

<sup>175</sup> Please see Attachment 316.

<sup>176</sup> Please see Attachment 316.

<sup>177</sup> Please see Attachments 316a, 316b.

- Adjust South walls of TSA Pre-Vestibule circulation for 8'-0" clear at first ASL on passenger side since ASL will remain curved. 17'-0" south of grid line N22. The TSA Pre-Vestibule circulation share remain 20'-0" W.
- LEO entry doors (6'-0" W) only at south end of checkpoint with access control
- Power and Data for Lane Assignment Podiums required
- South entry (at corner) to TSA Pre-Vestibule circulation for TSA Pre-Check passengers only. Opening must have the ability to be secured off. Opening width approx. 20'-0" W.
- E-gates required for credential authentication. Quantity TBD. Power and Data for E-gates required.
- Power and Data required along outside wall of vestibules for Credential Authentication Technology
- Power and Data required within vestibules 2 through 5 for CLEAR Kiosks flexibility.
- North entry to TSA Pre-Vestibule circulation for Premium Pre-Check passengers shall be an automatic sliding door (6'-0" opening) with Power and Data for an E-Gate Credential Authentication Technology
- Egress doors (6'-0" double doors) along East/West Pre-Vestibule circulation required to align with perimeter layout design and provide enough capacity for exiting entire checkpoint to meet City requirements per simulations.
- KCM entry will be located at the north end of the SSCP, along with the LEO entry.
- New Comm Room located at south end of checkpoint adjacent to TSA Supervisor Podium. Sized for 1 to 2 comm racks for TSA/ASL equipment

- The following information is provided to update/clarify Change Directive 09 – TSA Screening Area letter dated May 17, 2018:

### **1. Irregular Operations Area (Pre-Vestibule Area):**

- *K9 Operation flooring material considerations shall not be included in the design drawings*
- *Perimeter security wall shall be 8' H straight walls per the PDA requirements (no changes) and EDR scope.*
  - *Ballistic layer for all walls and doors*
  - *No glass or recesses*
  - *No 2' H Transom glass*
  - *Exterior finish - See CD-22 (pending)*
- *Emergency Egress doors per code (flush mounted, hidden frames on exterior)*
- *TSA PreCheck and Clear access as shown on the attached plan*
  - *TSA PreCheck passengers shall have the ability to enter the Pre-Vestibule through an opening along the south wall, adjacent to the corner.*
    - *This is not a sliding wall system*

### **2. Vestibule:**

- *Each vestibule shall have (2) sets of automatic sliding doors (4'-0" Clear) at each side for entry (see plan)*
- *Document Check positions as described in the original Change Directive.*
- *Clear Zone between TDCs and ASLs as described in the original Change Directive.*
  - *Clear glass doors shall be provided between the vestibules to secure the vestibule to the edge of the ASL (see plan), with 42" minimum clearance to pass between vestibules*
- *Walls between vestibules as described in the original Change Directive.*
- *No additional separation between vestibules and ASL equipment (from ceiling) is required to secure checkpoint*
- *Access between ASLs to adjacent vestibules is required (see above and plan). Power and data distribution solution shall be per CD-19.*

**3. Automated Screening Lane:** As described in the Change Directive

**4. TSA Support Spaces**

- *LEO Podium as described in the original Change Directive*
- *TSA Podium (north and south)*
  - *Plan/Elevation as developed during the Change Directive meetings*
  - *Each podium shall be program for three STSO's with power/data for six (6) computers.*
  - *Desk area shall be clear beneath*
  - *Base cabinets for storage required behind/adjacent to wrap around desk.*
- *Second Private Screening Room adjacent to south TSA podium*
- *KCM (Known Crew Members) entry shall be located at the north end of each SSCP, adjacent to the TSA Support Space Pod (see plan).*
  - *Door shall be 4'-0" W opening into security with no exterior (non-secure) hardware for access.*
  - *No Access Control is required at this door*
  - *Power/Data for 3 KCM workstations in vicinity of each door*
- *Provide power/data for employee card readers at each TDC*

*Provide power/data for IVCC stations at each TDC*

*Additional items to be incorporated in design:*

*I. Provide DEN Badge card reader (for employee) at Employee Access Portal (EAP) at East SSCP*

- *Layout per CD-07 (see plan provide in Aconex DEN-EML-000652)*

*2. K9 Operation area at south TSA Pre-Vestibule circulation shall have stand-alone non-conditioned fans diffusers in ceiling to provide airflow in the opposite directions of passenger flow. Fan system shall have timer and wall switch in TSA Pre-Vestibule area adjacent to K9 run.*

*3. TSA Support Spaces at north end of SSCP*

- *Layout Option 1 (see Aconex DEN-EML-001290)*
- *Remote Viewing Room is required to have 24 Workstations (17 SSCP lanes x 1.4 workstations per lane = 24 workstations-TSA Checkpoint Design Guide)*
  - *Extend room out towards center of Terminal (moving TSA Podium and Private Screening with it)*
  - *Separate Entry for Remote Screening room*
- *TSA Comm Room to accommodate 5 cabinet racks. (min 10'-0" wide)*
- *New TSA Checkpoint Requirement and Planning Guide (December 17, 2018) previously provided*
  - *TSA SSCP Equipment Power and Data requirements*
- *TSA does not have any preferences for colors for CAT6 cabling. Follow DEN standards.*
- *ASL equipment CAT6 cabling shall be color coded. Coordinate with DEN.*
- *Provide stanchion plugs for screw in stanchion poles in each vestibule floor system, in a 42"x42" grid"*

As shown below, a comparison of the layouts provided in the Agreement, Design Review meetings from September 5, 2018 to November 11, 2018 and the Change Directive 9 update issued on February 8, 2019 is shown below.

**REDACTED**

The first formal PCE, taking the updated requirements into account, was issued on March 11, 2019.<sup>178</sup> As set forth in the above timeline, it is clear from the scale, complexity, conceptual, and undefined nature of the Change Directive that a PCE could not have been issued prior to March 2019.

The Change Directives were not resolved on March 22, 2019 per the agreement in the first Tolling Agreement. The First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

The Owner requested a clarification on the Developer's PCE on March 18, 2019<sup>179</sup>, and a revised PCE was delivered on March 29, 2019.<sup>180</sup>

The Change Directives, including this one, were not resolved on April 15, 2019. The Second Extension of Tolling Agreement and Mediation Agreement was executed.

On April 17, 2019, the Owner requested the Developer attend a meeting to review the electrical load and circuit analysis, as per the newest revision of the Change Directive from February 8, 2019, in an attempt to reduce the number of circuits and cost. It should be noted that the number of circuits had already been agreed to on December 4, 2018, but after the Owner's change to its own Change Directive, this had to be reassessed.

Before the meeting on April 17, Developer presented an updated electrical load and circuit analysis Rev.2 that was discussed and challenged by the Owner during the meeting.<sup>181</sup> The Engineer of Record had created the new electrical load and circuit analysis based on the limited information provided by the Owner on February 8, 2019 and using the TSA design guidelines previously provided by the Owner. During the meeting, the Owner continued to attempt to reduce the number of circuits without understanding that the TSA guidelines requested a number of items of equipment that the Owner did not want to include. The

---

<sup>178</sup> Please see Attachment 318. Additional PCE was provided on March 29, 2019. Please see Attachment 318a and 318b.

<sup>179</sup> Please attachment 318c.

<sup>180</sup> Please see Attachment 318a and 318b.

<sup>181</sup> Please see Attachment 319.

action from the meeting was for the Owner to review the electrical load and circuit analysis and confirm the equipment they would be providing.

On April 25, 2019, the Owner issued email correspondence with a reviewed marked-up version of the electrical load and circuit analysis Rev.2.<sup>182</sup> This finally included the equipment the Owner was intending to install, which until now had not been provided in detail and the majority of which were outside of the TSA SSCP requirements.

Developer requested confirmation regarding the scope of work required of Change Directive 9 on April 29, 2019,<sup>183</sup> in response to the Owner's April 25, 2019, correspondence.<sup>184</sup> In this correspondence, it was confirmed by the Owner that the Developer was using the correct guidelines.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>182</sup> Please see Attachment 320.

<sup>183</sup> Please see Attachment 321.

<sup>184</sup> Id.

#### e. Change Directive 013 – Delete Terminal Hydronic Pump Scope

Developer received Change Directive 13 on September 12, 2018 (the “**Change Directive**” or “**Change Directive 13**”).<sup>185</sup>

Change Directive 13 directs the Developer to remove the design and installation of Hydronic Pumps from the scope of Work required to be undertaken by the Developer in respect of the Project. Prior to the issuance of Change Directive 13, the design and installation of these pumps was part of the base scope of the Developer’s obligations in respect of the Project.

The original scope of Work as set forth in Appendix 3.J.3 Basis of Design – Building Systems of the Agreement requires the Developer to undertake the following:

Based on the age, the fact that parts are not available and the DEN requirements for primary pumping redundancy, the terminal primary chilled and heating water pumps will be replaced. There will be three 3,300 GPM, 180 Ft. w.c. chilled water pumps and three 1,800 GPM, 175 Ft. w.c. heating water pumps.

The scope of work changes directed by Change Directive 13 as compared to the scope prior to the Change Directive and the related impacts on the D&C Work, the O&M Services and the Concessions Program are as follows:

- Eliminating the three (3) 3,300 gallon per minute chilled water pumps, three (3) 1,800 gallon per minute heating pumps, and all associated drivers, controls, temporary and new piping, structural, and electrical upgrades that would have been required to replace the existing pumps with the new pumps. These heating and cooling systems are defined in 4.4.1.3 of the Physical Project Plan Building Systems Report contained in the Development Agreement.
- The Developer remains responsible for connecting Developer supplied hydronic piping to the Owner provided hydronic systems, including coordination of shut downs and tie-ins.
- The Developer remains responsible for installing, commissioning, and controlling all Developer supplied hydronic systems within the Developer work area(s).
- Developer shall provide an updated HVAC Load Study to the Physical Project Plan Building Services Report section 4.4.1.2.

By way of background, on December 19, 2017 Developer and Owner together with Burns & McDonnell (the Owner’s other contractor) attended a meeting organized by the Owner to discuss the Terminal hydronic pumps. During the meeting it was mentioned that the design and installation of the

---

<sup>185</sup> Please see Attachment 71.

hydronic pumps was included within Developer's contract as well as under Burns & Mc Donnell contract. The Owner expressed their preference to remove the mentioned pumps from Developer's scope of works but took no action to actually do so.<sup>186</sup> As detailed below, it would take the Owner another 7 months to actually formally instruct the Developer to remove this scope of work from the Developer's Work. As such, the Developer was required during such time period to progress with its design as though this scope of Work was still required.

During a follow-up mechanical and plumbing meeting on February 21, 2018, the Owner stated that it was working on a letter regarding a change for the Chill and Heat Water Pumping Station.<sup>187</sup>

Another mechanical and plumbing meeting occurred on March 8, 2018, wherein it was stated that the Chilled and Heating Pump Station scope would be removed from Developer's scope of Work via a deductive Change Directive.<sup>188</sup>

As an action item from a meeting held on March 21, 2018, it was agreed that the Owner would provide a Change Directive to remove the Chilled and Heating Pump Station from Developer's scope of Work.<sup>189</sup> The Owner was reminded the need for official change direction at the subsequent Mechanical and Plumbing Design Meeting on April 4, 2018.<sup>190</sup>

Because as of August 2, 2018, the Developer had not received official instruction to remove the Terminal primary heating and chilled water piping and pumps the Developer submitted RFI-055 requesting clarification since the Owner had (apparently) contracted with Burns-McDonnell for the design of such work.<sup>191</sup>

The Owner responded to RFI-055 on August 10, 2018, stating that a Change Directive removing this scope was in process and would be provided.<sup>192</sup>

---

<sup>186</sup> Please see Attachment 327.

<sup>187</sup> Please see Attachment 322.

<sup>188</sup> Please see Attachment 323.

<sup>189</sup> Please see Attachment 324.

<sup>190</sup> Please see Attachment 325

<sup>191</sup> Please see Attachment 326.

<sup>192</sup> Please see Attachment 326.

A month later, on September 12, 2018, the Owner finally issued Change Directive 13 directing the Developer to delete all scope of work associated with the Terminal hydronic pumps.<sup>193</sup>

A Preliminary Change Estimate for Change Directive-13 was provided less than a month later, on October 10, 2018.

On October 24, 2018, the Owner requested a more detailed estimate (units and rates) for labour and material for the piping and power scope of Work included in Change Directive 13.

The Owner agreed to the total Direct Costs but requested the addition of all the construction management fees, contingency fees and M/WBE fees because this Change Directive involves the removal of base scope, the issue prohibiting the approval of the Developer's PCE is the Owner's belief that in addition to the direct costs the Owner is entitled to the markups associated with the work. Developer advised that it would not be revising the pricing included in the original PCE, and the number will remain as a credit of \$256,018.00.<sup>194</sup>

The Change Directives were to be resolved no later than March 22, 2019, per the January 16 Tolling Agreement. Resolution did not occur. The First Extension of Tolling Agreement was signed, extending resolution of the Change Directives until April 15, 2019. Same as the other Change Directives discussed herein, this Change Directive was not resolved as of April 15, 2019. The parties then executed the Second Extension of Tolling Agreement and Mediation Agreement.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>193</sup> Please see Attachment 71.

<sup>194</sup> Please see Attachment 328b.

#### **f. Change Directive 15 – Level 5 Storefront Revisions**

Developer received Change Directive 15 on November 14, 2018 (the “**Change Directive**” or “**Change Directive 13**”).<sup>195</sup>

This Change Directive directs the Developer to design and install new anodized aluminum storefront systems and to replace the existing storefront systems in the East and West Level 5 baggage claim areas. This scope of Work deviated from the previously agreed scope of Work and required a Change Directive.

This Change Directive impacted the architectural finishes, FF&E and MEP, and was later impacted and modified by the Change Directive 16 received from the Owner in December 2018. Later, in February 2019 the Owner submitted the Change Directive 22 modifying once more the finishes included in Change Directive 15 so it had to be redesigned yet again.

Below is a graphic illustrating the key dates for Change Directive 15. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner’s preference for a Change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the Change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 15.

---

<sup>195</sup> Please see Attachment 77.

**REDACTED**

As noted above, Change Directive 15 requires the Developer to change the sections of the Level 5 baggage claim area that were originally designed by the Developer to be gypsum partitions to aluminum and glass store front. This required a redesign of these areas by the architectural design team and an increased effort to match and built a similar appearance of the new design with the existing storefront system (storefront system is a type of external architectural finish for the walls affected and facing the public circulation area). The description included as part of this Change Directive for the architectural finishes was:

1. Provide new anodized aluminum storefront system, where the current design shows new storefront previously coordinated with Airline BSO requirements.
2. Replace existing Stainless Steel (SS) storefront system with the new anodized aluminum storefront system, where the current design required storefront to remain.
3. Replace existing Stainless Steel (SS) storefront system with high impact wall panels, where the current design does not required storefront to remain (previously noted to have vinyl black-out on existing storefront).

This Change Directive also required additional reviews by the engineering teams to coordinate the MEP systems around this changed architectural feature.

As is further described below, Change Directive 15 was provided after Phase 1 Issue For Construction Package was permitted. In particular, Change Directive 15 included a layout of Level 5 baggage claim areas simply highlighting with a line the walls impacted by the Change Directive and indicating where new storefront system was required or where the existing storefront systems should be replaced. Additional storefront requirements that were not part of Change Directive 15 were requested later by the Owner as part of Change Directive 16 meetings. These areas included DPD, Credit Union and permit sales office also located in Level 5 of the terminal.

Change Directive 15 has a large impact on the Developer's prior design and construction plans. In particular, it requires the Developer to perform a significantly greater amount of Work in an area that originally had a minimum amount of Work which, in turn, causes the Developer to modify the construction area and making it more complex as it is located in the Level 5 boundary of the Construction Site as shown below. This area is also critical for Airlines as they have their baggage offices in the same area and so

additional coordination with such airlines will be required and their approval must be obtained by the Owner as described below. In addition, the area affected by this Change Directive is part of Phases 1, 2 and 3 of the Project which, in turn, means that the reopening of the design packages will impact the design packages for all of such areas. An illustration of the areas impacted by this Change Directive is included below:

**REDACTED**

The Owner first alluded to its plans to change its storefront requirements in comments that it provided in its review of the design packages and during the weekly Change Management Meetings. Based on such comments, on July 26, 2018, the Developer sent the Owner correspondence seeking confirmation as to the Owner's design requests discussed during such prior Change Management Meetings, including a request for specific direction in the form of an Owner Change, if the Owner wished to add additional storefront entrances for the baggage offices on Level 5 among other additional requests made verbally by the Owner.<sup>196</sup>

Because the Owner did not respond to such correspondence, the Developer followed-up on the Level 5 storefront entrance requirements sending an email to the Owner on August 15, 2018. In such follow-up correspondence, the Developer noted that it would not make any changes in respect of the storefront unless further direction is received from the Owner.<sup>197</sup>

As no direction was provided by the Owner, the Developer continued with the design as per the Agreement and submitted the Combined Phase 1 IFC Submission to the City on August 15, 2018.

Three months later, and after the City issued the permit for the Combined Phase 1 IFC Submission on November 8, 2018, the Owner issued Change Directive 15 on November 15, 2018, directing the Developer to design and install a new anodized aluminum storefront system in the Level 5 Baggage Claim area as shown in the attachment thereto.<sup>198</sup>

The first PCE for Change Directive 15 was provided by the Developer to the Owner on December 05, 2018 based on the Developer's understanding of the required changes.<sup>199</sup>

The Parties entered into the January 16 Tolling Agreement whereby the Change Directives were to be resolved by March 22, 2019.

---

<sup>196</sup> Please see Attachment 329.

<sup>197</sup> Please see Attachment 330.

<sup>198</sup> Please see Attachment 331.

<sup>199</sup> Please see Attachment 332. Additional PCEs were provided on February 05, 2019 and March 25, 2019. Please see Attachment 332a and 332b.

Two months after the provision of the PCE and after two months of work on this Change Directive, on February 4, 2019, the Owner issued a transmittal modifying the prior scope of Change Directive 15 and directing the Developer to amend the prior instruction and adding additional confusion and complexity by stating that some quantities and costs associated with Change Directive 15 would instead be included in a different Change Directive by the Owner. The transmittal specifically stated to "replace existing Stainless Steel (SS) storefront system with high impact wall panels, where the current design does not require storefront to remain (previously noted to have vinyl black-out on existing storefront)" with a new instruction to instead "replace existing Stainless Steel (SS) storefront system with Acrylic Solid Surface Material (SSM), where the current design does not require storefront to remain (previously noted to have vinyl black-out on existing storefront). The new SSM quantity and cost shall be included in Change Directive 22, not with this Change Directive."<sup>200</sup>

In order to accelerate the process and reach an agreement with the Owner, the Developer provided a revised PCE on February 5, 2019.<sup>201</sup>

This Change Directive was not resolved on March 22, 2019. Therefore, the First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

At the request of the Owner, another revised PCE was provided on March 25, 2019 reducing the design fee at the Owner's direction.<sup>202</sup>

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>200</sup> Please see Attachment 333.

<sup>201</sup> Please see Attachment 332a.

<sup>202</sup> Please see Attachment 332b.

**g. Change Directive 16 – Reconciliation of DEN Tenants, Airlines, and Concessionaire Spaces**

Developer received Change Directive 16 on December 28, 2018 (the “**Change Directive**” or “**Change Directive 16**”).<sup>203</sup>

Change Directive 16 directs the Developer to undertake allocation space changes that deviated from the space allocation previously agreed as part of the Scope of Works. In particular, in the Change Directive, the Owner directed the Developer to make changes in Level 5 and Level 6 including a total of 35 spaces with an approximate area of 16,000 sf being relocated and redesigned. This resulted in about 40% of Owner tenants, Airlines, GHP retail and GHP Concessionaire storage spaces being modified as compared to the Developer’s original design.

This Change Directive affected the architectural, finishes, FF&E and MEP design. Those spaces resulted in changes to the use and occupancy of the Scope Exhibits in the Technical Requirements and to the agreements made with the fourteen (14) airlines in the meetings held since January 2018. Moreover, there is a relationship between this Change Directive and the Change Directive 17 for several rooms so both Change Directives needed to be redesigned at the same time.

As Developer only received pdf sketches for suggested partitions in those spaces, in order to implement the Change Directive, Developer had clarification meetings with the Owner for three months to resolve all the undefined issues of the Change Directive.

Below is a graphic illustrating the key dates for Change Directive 16. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 16.

---

<sup>203</sup> Please see Attachment 78.

**REDACTED**

Change Directive 16 was issued toward the end of the design process for the Project and as a consequence of a numerous changes that had previously been requested by the Owner that fell outside the original scope of Work. When originally issued, the changes required by this Change Directive were not clear. In particular, the Change Directive included a PDF mark-up of the Level 5 and Level 6 areas highlighting the spaces to be modified per the requirements of the Change Directive, noting where a few new internal partitions should be placed and including a few comments from the Owner to be considered by the Developer. Developer promptly commenced trying to receive clarification on the scope of the requested changes, but this process ended up taking several months.

The changes required by this Change Directive affect the layout of numerous spaces (and allocation of space for various uses within such layout), impose additional requirements in respect of the finishes in such spaces, and require modifications to the agreed upon MEP systems. In addition to the wide scope of changes required, the Developer also had to undertake additional analysis for DBC compliance as some of these changes affected the previous occupancy uses. The area affected by this Change Directive is part of Phases 1, 2 and 3 of the Project and also the North Terminal. Due to the magnitude of the changes and the late stage in the design process, the Developer will need to reopen its Phase 1 design that had already been permitted in November 2018. In particular, the redesign must take into account the following changes per discipline:

- Architectural – revision of layouts, design coordination with other disciplines, coordination meeting presentations and analysis of program information received.
- MEP – update of all systems based on new layouts and integration of all new equipment.
- Building Code Compliance – updating analysis for occupancy and use of the spaces.

Areas affected by Change Directive 16 are shown below:

**REDACTED**

The changes to the scope of D&C Work for this Change Directive includes:

- *Provide updated Level 5 and Level 6 layouts for the DEN tenant spaces and Concessionaires storage and retail space, as previously coordinated with DEN, and shown in the sketches attached.*
- *Areas that have been adjusted as compared to the requirements for the scope under the Agreement are highlighted in colors and clouded.*
- *The AS CHP Concessionaires Storage area program now includes (independent of Change Directive 10) additional area near N14.5 gridline (at E4 and W4) to accommodate the possibility of future oversized lift right-of-way. The Owner will notify the Developer in advance of the installation for coordination and temporary relocation of storage areas impacted due to the construction.*
- *The Level 5 Mod 3 Permit Sales office identified in the Agreement, shall become a credit union. The credit union shall be turned over to the Owner as a “white box”. A credit for the base finishes for both the permit sales office and the credit union (previously shown on the AOB North Terminal Corridor) is due to the Owner.*
- *Airlines Baggage Service Offices located in L5-Mod 2-11D and L5-Mod 3-14B have been revised.*
- *The following revisions are shown on the drawings:*
  - *L5-Mod 1 (8A):*
    - *The money exchange (DEN) in Mod 1-Center beneath the grand stairs shall be 100 square feet (“SF”) as compared to XX SF.*
    - *DEN Paramedics (880 SF) and DPD (520 SF) shall be relocated to the previous DEN Available space (per previous mark-ups and correspondence) and surplus area remaining as DEN available (410 SF).*
  - *L5-Mod 1 (8B):*
    - *The Masjid (500 SF) shall be relocated to the DEN Available space.*
  - *L5-Mod 1 (8D):*
    - *Add SS bag slide in open space (Baggage BOH 031) south of existing Ski Carousel, per previous mark-ups and correspondence.*
  - *L5-Mod 2 (11B):*
    - *DEN Paramedics shall be located in previous DEN Available space (245 SF), per previous mark-ups and correspondence.*
  - *L5-Mod 2 (11C):*
    - *Adjust the west wall of AS GHP Concessionaries Storage areas to increase room size by approx. 172 SF, by reducing the adjacent UA OS Life Area 058.*
  - *L5-Mod 2 (11D):*
    - *Adjust the east wall of AS GHP Concessionaire Storage areas to increase room size by approx. 257 SF, by reducing the adjacent DEN Available Space 076.*
    - *Revise DEN Available Space 022 to be 240 SF (with east storefront per CD-015). This space shall include:*
      - *140 SF BSO lobby with standard BSO Podium millwork (2 positions) and CPT-10 carpeting*
      - *100 SF BSO Storage with standard shelving and LVT-14 vinyl tiles*
    - *Revise DEN Available Space 268 to include (2) SWA Assistant Manager offices (112 SF and 130 SF), Corridor, and Future BHS OS Lift chase*
  - *L5-Mod 3 (14A):*
    - *Swap Retail Unit L5-MG-30 (730 SF) with DEN Available Space*
    - *Add SS bag slide in open space north of existing Ski Carousel (in front of DL BSO Lobby), per previous mark-ups and correspondence.*
    - *Due to egress route requirement from Baggage BOH, DL Lobby and Storage areas to be reconfigured by the Developer (no cost to Owner) to provide*

*approx. 200 SF lobby and approx. 400 SF storage area per previous mark-ups.*

- *Add door from DEN Available Space 016 into LS BOH corridor.*
- *L5-Mod 3 (14B):*
  - *Due to egress route requirement from Baggage BOH, AA Lobby and Storage areas to be reconfigured by the Developer (no cost to Owner) to provide approx. 250 SF lobby and approx. 450 SF storage area per previous mark-ups.*
  - *Revise American Airlines Lobby 094. Move north wall 4'-0" north reducing Retail Unit L5-MG-31 area by approx. 120 SF. This lost area is replaced by increasing concessions unit L5-MG032 by 120 SF (See 1.e.x.5).*
  - *Update American Airlines BSO layout showing shelving, lockers, built-in millwork and a kitchenette as shown in the attachment.*
  - *Add SS bag slide in open space north of existing Ski Carousel (in front of AA BSO Lobby).*
  - *Revise DEN Available Space (south of AA BSO Storage) to be approx. 215 SF with a door exiting to LS BOH Corridor*
- *L5-Mod 3 (14C):*
  - *Change Permit Sales office to Credit Union (Whitebox).*
  - *Add door from DEN Available Space 042 into LS BOH corridor*
- *L5-Mod 3 (14D):*
  - *Revise layouts for the Sanctuary/Celebration room 068, Storage 066, and Masjid 058, with Chapel (575 SF), Office (75 SF) and Storage (75 SF).*
  - *Allocate 115 SF in rear of RU LG-MG-5 to storage (no physical partition)*
  - *Allocate 110 SF in rear of RU LG-MG-3 to storage (no physical partition)*
  - *Allocate 150 SF in rear of RU LG-MG-2 to storage (no physical partition)*
  - *Swap DPD (See 1.e.i.2) and TSA Pre-check (See 1.e.xii.1) with newly named Retail Unit L5-MG-32 (730 SF) and move eastern wall of this relocated concessions space to increase the floor plan to 1225 SF (addition of 730 SF, 120 SF from American Airlines Re-alignment and 375 SF from items 1.e.x.2 – 4 above).*
  - *Include DEN Available Space of approx. 275 SF in remaining area.*
  - *Move double doors in Event Storage 050 to West wall.*
  - *Add SS bag slide in open space south of existing Ski Carousel, per previous mark-ups and correspondence.*
  - *New Unit L5-MG-32 replaces Unit L5-MG-30 (from area 14A) with associated utilities.*
- *L6 Mod 1 (8A):*
  - *Swap approx. 500 SF of DEN Available Space 155 with Concessions Space GHP LS Storage.*
- *L6-Mod 1 (8B):*
  - *Adjust the south wall of Concessions Space GHP LS Storage to reduce room size by 350 SF to 610 SF. Change adjacent DEN Available space to TSA Pre-check at 800 SF.*
- *L6-Mod 2 (11A):*
  - *Revised Electrical Room 030 (not used) to Wheel Chair Storage and combine with adjacent room DEN Available 106 (remove dividing wall).*
- *L6-Mod 2 (11B):*

- *Revised Electrical Room 044 (not used) to Wheel Chair Storage and combine with adjacent room DEN Available 092 (remove dividing wall).*
- *L6-Mod 2 (14A):*
  - *Adjacent unused space to the west of the structural bracing (W4) is assigned to RU-L6-1 Convenience as support space (approx. 80 SF).*
- *L6-Mod 2 (14B)*
  - *Adjacent unused space to the east of the structural bracing (E4) is assigned to RU-L6-4 Convenience as support space (approx. 65 SF).*

On July 26, 2018, Developer issued correspondence<sup>204</sup> advising that an Owner Change was required in order for the Owner's requested Changes to be properly implemented in the Project. These included changes in the airline requirements after June 29, 2018 layouts approval and addition of terrazzo flooring in the ground transportation lobby.<sup>205</sup>

The Developer sent the Owner additional correspondence on September 13, 2018, advising that an Owner Change was required for new airline layout and FF&E changes received via email from the Owner and that differed from the previously approved Phase 1, Phase 2 and North Terminal (AOB) layouts.<sup>206</sup>

Additional correspondence was provided by the Developer on December 11, 2018, requesting the specific Phase 1, Phase 2, Phase 3 and North Terminal layout changes.<sup>207</sup>

On December 28, 2018, Change Directive 16 - Reconciliation of DEN Tenants, Airlines and GHP Concessionaire Spaces (transmittal #DEN-TRN-002594), was received. This Change Directive modified spaces in Phases 1, 2, 3 and North Terminal (AOB).<sup>208</sup>

As noted previously, the Change Directive included a total of 35 spaces (DEN Tenants, Airlines, GHP retail and GHP Concessionaire storage spaces) with an approximate area of 16,000 SQFT being relocated and redesigned. This resulted in about 40% of Owner Tenants, Airlines, GHP retail and GHP Concessionaire storage spaces being modified.

---

<sup>204</sup> Please see Attachment 334.

<sup>205</sup> Id.

<sup>206</sup> Please see Attachment 334a.

<sup>207</sup> Please see Attachment 334b.

<sup>208</sup> Please see Attachment 335.

This Change Directive affected all previously submitted design submissions, with an immediate impact on Phase 1. Specifically, when the Change Directive was issued in December 2018, the construction permit for Phase 1 had already been received in November 2018 as a result of the Combined Phase 1 IFC Submission.

The January 16 Tolling Agreement was executed on January 16, 2019, with the Change Directives to be resolved no later than March 22, 2019.

After reviewing the Change Directive provided, the Developer sent additional correspondence on January 23, 2019,<sup>209</sup> advising the Owner that some items were still missing from Change Directive 16 based on previous requests from the Owner, including:

Ground Transportation:

- Terrazzo flooring in the Front of House (FOH) has not been officially directed.
- Developer received from the Owner via e-mail a new layout on December 26, 2018. With no official direction, this new layout will not be incorporated into the design as it is not part of the Change Directive.

Commerce Hub:

- Developer is designing this space with offices, a breakroom, a reception, a meeting room, and a conference room.
- Developer received from Owner via e-mail on November 5, 2018, a request to remove the FF&E from the Commerce Hub and relabel it as Owner available space. With no official direction, this request will not be incorporated into the design as it is not part of the Change Directive.

DEN available spaces:

- Owner available spaces only include finishes. If the Owner is considering to change this space to a ‘white box’ as stated in previous FF&E and finishes meetings, this direction has to be official in order for Developer to incorporate it into the design. It was not included in the Change Directive

Airline comments for Phase 1 and 2:

- As per Developer’s letter #Developer\_DN\_FF\_LTR\_0006 dated September 13, 2018, Developer requested a Change Directive to incorporate airline comments that were received after June 28, 2018 when the layouts were already frozen. Developer expected to receive these changes as part of CD 16. Developer will not incorporate those changes until an official direction is received in the form of an Owner Change.
- Developer has recently received comments to the North Terminal IFR Package with Southwest Airlines requesting new changes to their layout. If the Owner desires to incorporate them into the IFC package, these will require an official direction in the form of an Owner Change.

---

<sup>209</sup> Please see Attachment 336.

On January 31, 2019, and in advance of a meeting scheduled for February 1, 2019, the Developer submitted clarification comments<sup>210</sup> for certain elements of Change Directives 16, 17, 18, and 20 – primarily architectural but also MEP/IT queries – for Owner’s review prior to the meeting.

Developer participated in a meeting with the Owner on February 1, 2019, to clarify the scope of such Change Directives.<sup>211</sup> Specifically, the Developer highlighted to the Owner a number of items which required their action to provide additional information before the Change Directive could be properly progressed and priced. These missing elements included:

- DEN to provide as-built drawings of existing money exchange kiosk.
- DEN to issue finish schedules.
- Phase 1 FF&E move matrices to be issued by DEN (on 2/4/18).
- NT and Phases 2-4 FF&E move matrices to be issued by DEN (on 2/15/18).
- TSA precheck program requirements needed (by 2/8/18) and finish schedule (by 2/4/18).
- Reiterated that the Developer required answers from the letter sent on January 18, 2019.

The Owner issued correspondence on February 5, 2019 and February 8, 2019, responding to the earlier January 18 letter.<sup>212</sup> That response provided:

Ground Transportation Center (GTC):

- Owner will issue direction through CD 16 to include Terrazzo Flooring in GTC Lobby area.
- Owner will issue direction through CD 16 to include the revised the GTC Counter layout.

Commerce Hub:

- Owner will issue direction through CD 16 to incorporate the revised layout that DEN has forwarded via email. The layout of the Commerce Hub shall include 4 offices, reception area and conference room, breakroom and open office layout.
- Space will remain Commerce Hub, layout revised.

DEN available spaces:

- Owner available spaces are not 'Whitebox'. See schedule for finishes.
- Airline comments for Phase 1 and 2:
- This issue is still under review with the Projects Executive Leadership Team. No Change Directive is currently being provided.
- The comments provided by Southwest Airlines for the North Terminal IFR Package requesting new changes to their layout were only provided in response to the DEN CRM comment that the Conference Room space was too large and required additional egress. Luis Vidal Architects (“LVA” the Architect of Record) is currently reviewing the occupancy requirements of the space and it may not need to be revised. If that is the case,

---

<sup>210</sup> Please see Attachment 337.

<sup>211</sup> Please see Attachment 338.

<sup>212</sup> Please see Attachment 339, 339a, 339c, 339d and 339e.

the new wall layout requests can be rejected. These IFR CRM comments will remain open until LVA shows the space can be permitted as is.

On February 10, 2019, the Owner issued correspondence relating to the Ground Transportation and Commerce Hub.<sup>213</sup> This specifically stated that the Owner had provided the missing information requested in the January 23, 2019 letter with the exception of the Phase 2, 3 and NT airline finishes clarifications.

The Developer provided additional correspondence on February 19, 2019, as a response to Change Directive 16 paragraph 1 “Provide update Level 5 and Level 6 layouts for the DEN tenant spaces and Concessionaire Storage and Retail space, as previously coordinated with DEN.”<sup>214</sup> Developer provided sketches for the Owner’s review and approval by February 26, 2019.

On March 1, 2019, the Owner issued comments on a Bluebeam mark-up on the drawings in response to Developer's correspondence from February 19, 2019.<sup>215</sup>

A PCE was provided on March 8, 2019.<sup>216</sup>

On March 15, 2019, correspondence was provided including the FF&E sketches and spreadsheet addressing Owner comments for Phase 1.<sup>217</sup> Since Change Directive 16 modified spaces affecting Phase 1, the FF&E scope had to be revised and updated.

On March 19, 2019, a revised PCE was issued<sup>218</sup> based on a request from the Owner at the Executive Design Review meeting on March 15, 2019 for all current PCE’s to be updated reallocating ‘GHB Design’ team costs.

On March 20, 2019, the Owner issued correspondence stating that all comments issued in the Developer's March 15, 2019 transmittal had been addressed and could therefore be closed.<sup>219</sup>

---

<sup>213</sup> Please see Attachment 340.

<sup>214</sup> Please see Attachment 341, 341a, 341b, 341c.

<sup>215</sup> Please see Attachment 342, 342a, 342b, 342c, 342d and 342e.

<sup>216</sup> Please see Attachment 343. Additional PCE was provided on March 25, 2019. Please see Attachment 343a.

<sup>217</sup> Please see Attachment 344 and 344a.

<sup>218</sup> Please see Attachment 344b.

<sup>219</sup> Please see Attachment 345 and 345a.

On March 21, 2019, a revised PCE was issued<sup>220</sup> after the Owner requested FF&E costs be moved from the PCE to their FF&E allowance.<sup>221</sup>

The Change Directives were not resolved as of March 22, 2019, per the January 16 Tolling Agreement. As such, the First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

A revised PCE for Change Directive 16 was issued on March 25, 2019<sup>222</sup> after the Owner challenged the design cost, and meetings were scheduled with Owner and subcontractors in an attempt to resolve this issue. As an example, the original cost for SENER Swanson Rink's (SSR) design was \$408k, the Owner estimated this to be only \$95k. The Developer worked with SSR to reduce this cost to \$260k.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>220</sup> Please see Attachment 345b.

<sup>221</sup> Please see Attachment 346.

<sup>222</sup> Please see Attachment 343a.

#### **h. Change Directive 17 – Airline Design Guidelines**

Developer received Change Directive 17 on December 28, 2018 (the “**Change Directive**” or “**Change Directive 17**”).<sup>223</sup>

Change Directive 17 directs the Developer to make changes to various airline spaces based on several new Airline Design Guidelines, not previously part of the scope of Work of the Project.

This Change Directive received in December 2018, requested to incorporate in the project the Airlines Design Guidelines for Finishes and millwork in Levels 5 & 6 and the North Terminal already submitted in all the previous packages of the project. It affected the architectural, finishes, FF&E, Electrical and IT/Comms design. Moreover, there is a relationship between this Change Directive and the Change Directive 16 for several rooms so both Change Directives needed to be redesigned at the same time.

Below is a graphic illustrating the key dates for Change Directive 17. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 17.

---

<sup>223</sup> Please see Attachment 79.

**REDACTED**

In the Change Directive, the Owner directed the Developer to make changes to the East and West airline spaces within the check-in PODs located on Level 6 among other Airline office spaces located in Level 5.

It was not clear to the Developer what Work was required to be implemented by this Change Directive. The original Change Directive 17 was very vague and conceptual in certain respects while highly detailed in other respects, making it impossible to actually be directly implemented by the Developer. This Change Directive affected the spaces for 14 different airlines, and the Owner included in this Change Directive 2 pages with tables for finishes detailing specific manufacturers and models to be used, 6 pages with tables for millwork, and 256 pages with Airline Design Guidelines for just 4 (out of 14) of the airlines. In addition to not providing guidelines for 10 of the airlines, certain of the guidelines that were provided were marked as “draft”. It took the Developer (and the Owner) several meetings as well as the exchange of multiple correspondences with the Owner regarding the scope of Work required by this Change Directive to fully understand what it was being requested to implement.

Change Directive 17 also requires the Developer to amend areas of the design that had already been permitted. The changes required affect the layout of numerous spaces and impose additional requirements in respect of the finishes in such spaces. The area affected by this Change Directive is part of Phases 1, 2, 3 and 4 of the Project and also the North Terminal (AOB).

A summary of the changes requested as compared to the original, agreed upon scope of Work is shown in the table below:

**REDACTED**

# REDACTED

As described in the Change Directive, the changes to the scope of D&C Work include:

- *American Airlines:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
    - *FRP Wall Coving Wainscoting (AA-FRP1)*
    - *Paint-Walls (AA-P1)*
    - *Paint-Accent Wall Tile (AA-WT1, AA-WT2, AA-WT3, AA-WT4)*
  - *Include the following Millwork details:*
    - *SS Bag Slide (GHB to detail)*
    - *BSO Counters by AA (AA furnish, Contractor install)*
    - *Solid Surfacing (AA-AFP1) for all horizontal counters*
    - *Acrylic Faced Panels (AA-AFP1) for all vertical cabinetry*
    - *Cabinet Locks: The deadbolt style lock is Olympus 725RD-DW-VH-26 as described at <http://www.olympus-lock.com/725rd.htm>. Should be Medeco IC core compatible. The deadbolt is installed so that it goes to the side behind the door next to it. The door without the deadbolt installed gets a simple latch installed to keep it closed while the deadbolt is engaged.*
- *Air Canada:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
    - *Paint-Walls (AC-P1)*
    - *Paint-Accent Wall (AC-P2)*
- *Alaska Airlines:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
    - *Paint-Walls (AS-P1)*
    - *Paint-Accent Wall (AS-P2)*
- *British Airways:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
- *Copa Airlines:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
    - *Paint-Walls (CM-P1)*
    - *Paint-Accent Wall (CM-P2)*
- *Delta Airlines:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
    - *Paint-Walls (DL-P1)*
    - *Paint-Accent Wall (DL-P2)*

- *Flooring-Carpet (DL-CPT1)*
  - *Include the following Millwork details:*
    - *SS Bag Slide (GHB to detail)*
    - *BSO Counters by AA (AA furnish, Contractor install)*
    - *Plastic Laminate (DL-PLAM1) for all horizontal counters*
- *Frontier Airlines:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
  - *Include the following Millwork details:*
    - *SS Bag Slide (GHB to detail)*
- *JetBlue Airlines:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
    - *Paint-Walls (B6-P1)*
    - *Paint-Accent Wall (B6-P2)*
    - *Wall Base (B6-RB1)*
    - *Flooring (B6-CPT1)*
    - *Flooring (B6-LVT1)*
  - *Include the following Millwork details:*
    - *Plastic Laminate (B6-PLAM1) Vertical surfaces*
    - *Plastic Laminate (B6-PLAM2) Horizontal surfaces/countertops*
    - *Cabinet Locks: Locks to be BEST SFIC with finger catches on non-locking doors in a 2-door cabinet.*
- *Lufthansa:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
- *Southwest Airlines (Southwest Airline Facility Standards Manual – Vol 1, Revised November 2017)*
  - *Include the following Room Finishes noted in Section 4, Product Specifications (and in the attached Room Finish schedule):*
    - *FRP Wall Covering Wainscoting (SWA-WC-1)*
    - *Flooring-Carpet (SWA-CPT2)*
    - *Flooring-Vinyl (SWA-LVT)*
    - *Base (SWA-SB)*
    - *Paint-Walls (SWA-P1)*
    - *Paint-Accent Wall (SWA-P7)*
    - *Paint-Doors/Frames (SWA-P2)*
  - *Include the following Millwork Finishes noted in Section 4. Product Specifications (and in the attached Finish schedule):*
    - *9-ply Plywood casework construction*
    - *16 GA. Stainless Steel kitchen countertops and backsplash (SWA-SST1)*
    - *Plastic Laminate-Cabinets (SWA-PLAM1)*
    - *Plastic Laminate-Casework (SWA-PLAM2)*
      - *With Bumper T-mold*
    - *Plastic Laminate-Casework (SWA-PLAM3)*
    - *Solid Surfacing (SWA-SS!)*
  - *Include the following Millwork details (9-ply Plywood millwork construction):*
    - *Mailboxes (SWA\_maildrop millwork.pdf)*
    - *Kitchen Counters and Cabinets (SWA\_BOF-0005 Back office Millwork Standard.pdf)*

- *BSO Shelving (SWA\_BSO-0006 Back Office Storage Bag Shelf.pdf)*
- *Spirit:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
- *United Airlines:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
    - *FRP Wall Covering Wainscoting (FRPI)*
    - *Paint-Walls (UA-P1)*
    - *Paint-Accent Wall (UA-P2)*
- *Volaris:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*
- *WestJet:*
  - *Include the following room finishes (as noted in the attached Room Finish schedule):*
    - *DEN Finishes (as scheduled)*

All these changes represented a major deviation from the original scope of Work contemplated in the Agreement wherein the Developer had committed to provide standard finishes for all the airline spaces and similar FF&E and millwork. These changes added a high level of customization and Extra Work.

The Owner should have known that this Change Directive may be required based on modifications to the airline requirements and airline layouts (previously agreed to on June 29, 2018) that were being discussed and reviewed with the Owner and the airlines for several months prior to the issuance of this Change Directive. Due to these changes being discussed, the Developer issued correspondence on July 26, 2018<sup>224</sup> advising that an Owner Change was required in order for the Owner's preferred Changes to be properly implemented in the Project because they deviated from the original scope of Work.

As no response was received from the Owner to such correspondence and, instead, the Owner continued to request additional changes outside of the appropriate Change process, the Developer sent to the Owner another correspondence on September 13, 2018 again advising that an Owner Change was required for the new airline layout and FF&E changes received via email from the Owner and that differed from the previously approved Phase 1, Phase 2 and North Terminal (AOB) layouts.<sup>225</sup>

---

<sup>224</sup> Please see Attachment 334.

<sup>225</sup> Please see Attachment 334a.

The Developer sent additional correspondence to the Owner on December 11, 2018, again requesting the specific Phase 1, Phase 2, Phase 3 and North Terminal layout changes.<sup>226</sup>

Finally, on December 28, 2018, Change Directive 17 – Airline Design Guidelines was received.

The Change Directive affected all previously submitted design submissions, with an immediate impact on Phase 1. Specifically, when the Change Directive was issued in December 2018, the construction permits for Phase 1 had already been received in November 2018 as a result of the Combined Phase 1 IFC Submission.

The January 16 Tolling Agreement was executed on January 26, 2019, with the intention that the Change Directives would be resolved by March 22, 2019.

The Developer sent correspondence to the Owner on January 21, 2019, listing all the pending information required to be received from the Owner related to the airlines and tenant spaces as they related to the scope of this Change Directive.<sup>227</sup>

Developer participated in a meeting with the Owner on January 30, 2019, to discuss FF&E status as well as move matrices for Phases 1, 2, 3, and the North Terminal (AOB) due to changes required by Change Directive 17.<sup>228</sup>

In advance of the February 1, 2019 meeting and to optimize the time spent at the meeting, the Developer provided comments seeking to clarify some elements of Change Directives 16, 17, 18, and 20.<sup>229</sup>

Developer participated in a meeting with the Owner on February 1, 2019, to clarify the scope of Change Directive 17 in addition to Change Directives 16, 17, 18 and 20.<sup>230</sup>

Developer participated in another meeting with the Owner related to Change Directive 17 on February 06, 2019, to discuss the FF&E status for the airline finishes for all phases.<sup>231</sup>

---

<sup>226</sup> Please see Attachment 334b.

<sup>227</sup> Please see Attachment 347.

<sup>228</sup> Please see Attachment 348.

<sup>229</sup> Please see Attachment 349.

<sup>230</sup> Please see Attachment 338.

<sup>231</sup> Please see Attachment 350.

The Owner issued correspondence on February 06, 2019, including a spreadsheet with the Airline Schedule and Legend tabs, with some of the Airline Finishes revisions/clarifications discussed between the Parties on January 30, 2019.<sup>232</sup> It was agreed that those items would be issued as a clarification to Change Directive 17 once all of the issues were resolved.

On February 7, 2019, the Owner issued correspondence with responses to Change Directive 17 in respect of the airline finishes for Phase 1.<sup>233</sup> The Owner agreed that Phase 2, 3, and NT (WS, CM, AC) would be sent on February 11, 2019 as agreed at the February 06, 2019 meeting.<sup>234</sup>

The Owner issued correspondence on February 11, 2019, with airline finishes clarifications/updates to Change Directive 17 in response to the correspondence from January 21, 2019.<sup>235</sup>

Developer participated in an additional meeting with the Owner concerning Change Directive 17 on February 22, 2019.<sup>236</sup>

A Preliminary Change Estimate was finally provided on March 06, 2019.<sup>237</sup> Such Preliminary Change Estimate could not have been provided earlier as the Developer required the above described clarifications in order to provide such estimate.

Developer participated in a meeting with the Owner concerning Change Directive 17 on March 20, 2019, to discuss FF&E status and outstanding airline finishes for Phases 1 and 2.<sup>238</sup>

The Change Directives were not resolved on March 22, 2019, per the January 16 Tolling Agreement. The First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

A revised PCE for Change Directive 17 was delivered on March 25, 2019.<sup>239</sup> As with many of the revised PCEs for other pending Change Directives delivered during this time, the revisions were the result

---

<sup>232</sup> Please see Attachment 351 and 351a.

<sup>233</sup> Please see Attachment 352.

<sup>234</sup> Please see Attachment 349.

<sup>235</sup> Please see Attachment 353.

<sup>236</sup> Please see Attachment 354.

<sup>237</sup> Please see Attachment 355. Additional PCE was provided on March 25, 2019. Please see Attachment 355a.

<sup>238</sup> Please see Attachment 356.

<sup>239</sup> Please see Attachment 355a.

of meetings with the Owner and subcontractors to attempt to resolve the Owner's dispute as to the cost Developer was entitled to for the changed work.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

**i. Change Directive 18 – Level 6 TSA “Pet Shop” (Pod B) Clarification**

Developer received Change Directive 18 on December 28, 2018; the Change Directive was further revised on December 31, 2018 to add missing attachments (the “**Change Directive**” or “**Change Directive 18**”).<sup>240</sup>

Change Directive 18 directs the Developer to make changes to the Level 6 TSA Pet Shop, located within Pod B, which deviated from the agreed scope of Work in the Agreement. In particular, this Change Directive 18 changed architectural elements and finishes previously agreed upon and added additional electrical requirements. This affected the architectural, finishes, FF&E and MEP design.

Below is a graphic illustrating the key dates for Change Directive 18. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 18.

---

<sup>240</sup> Please see Attachment 80.

**REDACTED**

**REDACTED**

The area effected is contained entirely within the room shown above and includes the following trades:

- Drywall/Framing
- Acoustical Ceiling
- Electrical – CCTV, Power, Data
- Doors/Frame/Hardware

In addition to the above, the Change Directive is adding components to the space that were previously permitted. The additions include the following:

- Power and Data for a clock
- Phone Port for DEN line
- CCTV cameras
- TSA desk with power
- TSA search tables with power and data
- Power and Data for CT 80 EDS
- Data for Server
- Doors and Hardware

This Change Directive required the Developer to reopen certain design packages that had already been permitted.

The Parties agreed for the Change Directives to be resolved by March 22, 2019, per the January 16 Tolling Agreement.

As part of the original Change Directive, the Owner provided a sketch mark-up PDF over the previous design and stated “The sketch shall be considered conceptual program space planning layout...”. Prior to these requested changes, the Developer had already provided conceptual designs for the area affected by this Change Directive as part of its 30% Schematic Design in December 2018. The space planning for this area was completed and depicted in the Combined Phase 1 IFC Submission in August 2018. Specifically, when the Change Directive was issued in December 2018, the construction permits for Phase 1 had already been received in November 2018 as a result of the Combined Phase 1 IFC Submission.

The January 16 Tolling Agreement was executed on January 26, 2019, with the intention that the Change Directives would be resolved by March 22, 2019.

It was agreed between the Owner and the Developer to arrange a meeting for clarification of certain items affected by this Change Directive 18 on February 1, 2019. In advance of the meeting and to utilize the meeting time efficiently, the Developer provided comments to clarify some elements of Change Directives 16, 17, 18, and 20.<sup>241</sup>

Developer participated in a meeting with the Owner on February 1, 2019, to clarify the scope of Change Directive 18 as well as to discuss Change Directives 16, 17, and 20.<sup>242</sup>

As a consequence of the February 1, 2019 meeting, the Developer continued with the implementation of Change Directive 18 and coordination of all the elements affected by this Change Directive. On February 13, 2019, Developer confirmed the adjusted ceiling height of 9'-0" was coordinated based on structural and mechanical considerations.<sup>243</sup>

Once all the information was known by the Developer, on March 08, 2019, a PCE for Change Directive 18 was provided to the Owner.<sup>244</sup>

A revised PCE for Change Directive 18 was delivered on March 25, 2019.<sup>245</sup> As with many of the revised PCEs for other pending Change Directives delivered during this time, the revisions were the result of meetings with the Owner and subcontractors to attempt to resolve the Owner's dispute as to the cost Developer was entitled to for the changed work.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>241</sup> Please see Attachment 349.

<sup>242</sup> Please see Attachment 338.

<sup>243</sup> Please see Attachment 358, 358a, 358b and 358c.

<sup>244</sup> Please see Attachment 359.

<sup>245</sup> Please see Attachment 355a.

#### **j. Change Directive 19 – Level 6 Ticketing Power and Data Cabling**

The Developer received Change Directive 19 on February 20, 2019 (the “**Change Directive**” or “**Change Directive 19**”).<sup>246</sup>

Change Directive 19 directs the Developer to provide additional power and data capacities for the ticketing equipment that deviated from the agreed scope of Work in the Agreement and as a consequence of Owner’s amendment to the original ticketing equipment to be provided as part of the Project. In particular, in the Change Directive, the Owner directed the Developer to make changes to all the check-in areas located in Level 6 affecting the eight PODs (check-in islands and Airlines office spaces) [and to use Hybrid Units at all of such counters as explained below].

Below is a graphic illustrating the key dates for Change Directive 19. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 19.

---

<sup>246</sup> Please see Attachment 83.

**REDACTED**

Change Directive 19 directs the Developer to incorporate the following additional power and data requirements for new ticketing equipment required by the Owner that deviates from the original ticketing equipment to be used:<sup>247</sup>

- Provide power and data to each Ticketing Airline Agent position for the additional Ticketing Self Bag-Drop position to create the Ticketing Hybrid Unit (80).
- Provide power and data to each Ticketing Self Bag-Drop position for the additional Ticketing Airline Agent position to create the Ticketing Hybrid Unit (96).
- Provide Access Control requirement to each Ticketing Hybrid Unit (176).

The Owner issued this Change Directive late in the Developer's design process. As such, it had direct impacts on various areas of the Developer's design work that had already been permitted by the City, in particular, the Developer's electrical work (as the ticketing positions have new electrical requirements). This late issuance was exacerbated by the fact that the Owner knew about the new requirements set forth in this Change Directive as far back as November 2018, but did not direct the Developer to include them until several months later. This Change Directive affects all ticketing areas located in Level 6. It impacts the Developer's Phase 1 and Phase 2 design and construction work.

The following picture illustrates the data requirements for Airline Agent position (blue), Self Bag-Drop position (red) and access control requirements (green) for the 22 Ticketing Hybrid Units in one airline pod (8 pods total) impacted by this Change Directive (22 units x 8 pods = 176 units):

---

<sup>247</sup> Please see Attachment 363.

**REDACTED**

**REDACTED**

The original scope of work related to the ticketing equipment was as set forth in the Technical Requirements, which set forth the following:

- Operated Bag Drop Positions – (80) Materna Drop Go (A) units (or similar)
- Self-Service Bag Drops – (96) Materna Air Go (B) units (or similar)
- Ticketing Kiosks – (24) Materna Pax Go (B) kiosks (or similar)

By way of background, prior to the issuance of this Change Directive, the path to a revised scope of Work started on May 07, 2018, when Developer provided the Owner with a detailed scope of work document from the equipment supplier Materna who had been engaged by Developer to provide the ticketing equipment required by the Agreement, and continued through to November 9, 2018, when Owner finally agreed to revised scope of work document prepared by Materna. During those months, the Owner and the Developer had several meetings and discussions about the replacement of the original ticketing equipment contemplated in the Agreement with a new type of equipment. The following correspondence summarizes the different revisions reviewed by the Owner and the Developer:

- May 07, 2018 – Re: Ticket Counters and Kiosks – Materna Integrated Passenger Services – BIOMETRICS update.<sup>248</sup>
- June 11, 2018 – Re: Materna Order.<sup>249</sup>
- June 26, 2018 – Re: Materna Hybrid Design – Design Requirements Follow Up.<sup>250</sup>
- July 16, 2018 – Re: Materna Order Changes – Request for Meeting on July 17.<sup>251</sup>
- July 17, 2018 – Re: Materna Order Changes – Summary of July 17<sup>th</sup> Meeting.<sup>252</sup>
- July 20, 2018 – Re: Materna Hybrid Units – Changes in the Scope of Works and new design of Hybrid Units.<sup>253</sup>
- July 31, 2018 – Re: Materna Direction on Unofficial Changes.<sup>254</sup>

---

<sup>248</sup> Please see Attachment 364b.

<sup>249</sup> Please see Attachment 364c.

<sup>250</sup> Please see Attachment 364d.

<sup>251</sup> Please see Attachment 364e.

<sup>252</sup> Please see Attachment 364f.

<sup>253</sup> Please see Attachment 364g.

<sup>254</sup> Please see Attachment 364h.

- August 8, 2018 – Re: Updated Materna Pricing.<sup>255</sup>
- August 10, 2018 – Re: Updated Materna Pricing Revision 1.<sup>256</sup>
- November 9, 2018 – Re: Request for Approval Scope v1.6 Materna Hybrid Units.<sup>257</sup>

The main consequence of the new equipment chosen by the Owner was that such equipment required increased power and data capacity as compared to the original scope of Work. When the Owner selected a Hybrid Unit for each of the 22 stations at each airline POD (eight (8) total PODs), the selection included two modes of operation (auto and manual), with each mode requiring a unique and independent control system. Both control panels will share the baggage belt equipment. The prior scope control panel count was  $80+96=176$  units making the revised scope for control panels  $176*2=352$ .

~~DEN has determined that the hybrid units will have the same functionality upon delivery as the self-bag drop, Air.Go C, see chart below, when the hybrid unit is operated in a (fully) automated mode. When the hybrid is used as an agent desk, the automated self-bag drop functionality will be disabled and the belts will operate in a manual mode. The same future capabilities that are installed in the hardware of the self-bag drop will also be installed in the hardware of the hybrid unit.~~

As it is shown on the timeline above, the last agreed scope between Developer and Owner is documented in the November 9, 2018 correspondence from Developer Re: Request for Approval Scope of Works v1.6 Materna Hybrid Units – Pricing Update.<sup>258</sup> This correspondence also documents the Owner's decision to issue a Change Directive for the extra electrical work required with this revised equipment selection by Owner. The Owner subsequently issued a separate but related Change Directive on March 14, 2019 for additional work changes required in respect of its decision to change the ticketing equipment used.

The PCE was formally submitted by the Developer to the Owner on March 11, 2019.<sup>259</sup>

As of the date hereof, this Change Directive has an impact in the design schedule and a critical impact on the construction schedule of 78 calendar days. Please see Attachments 4 and 4a. Please also see Attachment 3.

---

<sup>255</sup> Please see Attachment 364i.

<sup>256</sup> Please see Attachment 364j.

<sup>257</sup> Please see Attachment 364a.

<sup>258</sup> Please see Attachment 364a.

<sup>259</sup> Please see Attachment 365.

As FTI explains:

Change Directives 19 and 27 from DEN require [Developer] to install substantially more electrical, date and security scope than what was originally specified. In fact, [Developer's] pricing of Change Directives 19 and 27 accounts for a 266% increase in (original estimate of \$2,056,864 to revised estimate of \$5,480,537) scope for ticketing power and data cabling (including new electrical equipment and associated feeders, added power drops, telecommunication and data drops and BHS access control / cabinet changes). Due to these new requirements, the project schedule has been delayed. This has had a critical path impact of 78 calendar days in the construction schedule.<sup>260</sup>

---

<sup>260</sup> Please see Attachment 3 at pp. 9-10. Please also see pp. 46-50 of Attachment 3.

**k. Change Directive 20 – DEN Existing Art Location Update**

Developer received Change Directive 20 on December 28, 2018 (the “**Change Directive**” or “**Change Directive 20**”).<sup>261</sup>

Change Directive 20 directs the Developer to make various changes to its design to incorporate new requirements for the relocation of its existing artwork as well as in respect of future artwork installations, proposed locations for the same and requirements for all artwork locations. This Change Directive affects several areas in Level 5 and Level 6. It implicates changes to certain architectural elements, finishes, structural elements and mechanical elements and also added additional electrical requirement.

Below is a graphic illustrating the key dates for Change Directive 20. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 20.

---

<sup>261</sup> Please see Attachment 81.

**REDACTED**

**REDACTED**

**REDACTED**

The Developer received Change Directive 20 on December 28, 2018.<sup>262</sup> In the Change Directive, the Owner provided for the Developer with various specifications regarding the relocation of their existing art, requirements for future installations, proposed future installation locations, and requirements for each location. The Change Directive instructed the Developer to begin developing designs that integrated these requirements into the Project.

On January 30, 2019, the Owner issued correspondence updating the existing art reinstallation specification document to include previously discussed recess and reveal dimensions.<sup>263</sup>

Two months after receiving this Change Directive and during the clarification meetings process held with the Owner (more than 10 coordination meetings), the Owner issued a new Change Directive 22 directing to change several walls along Level 5 and 6 to acrylic solid surface material panel finish, so both Change Directives needed to be redesigned at the same time.

On March 15, 2018, the Owner issued a further update relocating some pieces of art, including a new direction to design and construct two sliding glass front display cases in the International Arrivals area of Level 5 for the Jeppesen Foundation artifacts and providing further details for the exhibit spaces in the AOB Corridor<sup>264</sup>.

The Change Directive affects all phases of the D&C Work and the D&C Work, including for the AOB Corridor. The referenced artworks, the requested locations for the same, and the D&C Work phases/disciplines they affect are detailed below:

#	Artwork	Original Layout Location	New Layout Location	Phase Affected	Disciplines Affected
1	Elrey Jeppesen Statue	Landside M&G Plaza	Landside M&G Plaza	2	Architectural Structural
2	America, Why I Love Her	International Arrivals	Domestic Arrivals	1	Architectural M & E Structural

---

<sup>262</sup> Please see Attachment 368

<sup>263</sup> Please see Attachment 372 and 372a.

<sup>264</sup> Please see Attachment 380, 380a, 380b, 380c

#	Artwork	Original Layout Location	New Layout Location	Phase Affected	Disciplines Affected
3	Notre Denver (2)	Baggage Claim 1 – MOD1 E 2 – MOD2 W	Baggage Claim 1 – MOD2 W 2 – MOD2 E	1	Architectural M & E Structural
4	Experimental Aviation	Domestic Arrivals	Domestic Arrivals	1	Architectural M & E
5	Spirit of the People	MOD3 POD Walls	MOD3 POD Walls	2	Architectural M & E Structural
6	A Different Sense of Time	TBD	Removed from Scope	-	
7	In Peace and Harmony with Nature	L6 Escalator MOD2 E	L6 Escalator MOD2 E	1	Architectural M & E Structural
8	The Children of the World Dream of Peace	L6 Escalator MOD3 E	L6 Escalator MOD3 E	2	Architectural M & E Structural
9	La Memoria de Nuestra Tierra	L6 Escalator MOD3 W	L6 Escalator MOD3 W	2	Architectural M & E Structural
10	Mile High and Rising	L6 Escalator MOD2 W	L6 Escalator MOD2 W	1	Architectural M & E Structural
11	Tribute to William E. Smith	TBD	Removed from Scope	-	
12	Balustrade	MOD3 E&W	MOD3 E&W	2	Architectural M & E Structural
13	Jeppesen Artefacts	Not in Original CD	International Arrivals	3	Architectural M & E Structural
14	Exhibit Spaces	Not in Original CD	AOB Corridor	AOB	Architectural M & E Structural

The Change Directive affects all previously submitted design submissions, including the Combined Phase 1 IFC Submission, which was permitted in November 2018. This Change Directive, in conjunction

with the other Change Directives issued post permit receipt for the Phase 1 construction permit, required the Developer to resubmit Phase 1 drawings to the City on June 4, 2019.

The Technical Requirements, Appendix 1, Section 1.3.4 states that:

**1.3.4 Art and Exhibits**

The Developer shall coordinate with the requirements of the City and County of Denver Ordinance for Art, which allocates a percentage of all new construction expenditures for public art programs.

Developer shall provide D&C Work associated with the final integration of artworks into the Project, which Work will be an Owner Change implemented pursuant to a Change Order.

The Agreement intended for the art scope to be provided by the Owner and integrated into the design via an Owner Change. Therefore, the Owner Change provided new scope that was anticipated by the Developer but unknown until issued.

Prior to the Change Directive issuance, the Owner issued a first correspondence regarding existing art on November 20, 2018, with some documents detailing the location and design parameters for the Owner's existing art's integration into the Great Hall Project.<sup>265</sup> The transmittal was for information only at that time, and it was anticipated that a formal Change Directive would be issued over the next few days to finalize these parameters.

Developer participated in a meeting with the Owner on November 30, 2018, to discuss new locations for the existing art in the Great Hall.<sup>266</sup>

Finally, on December 28, 2018, Change Directive 20 was issued directing the Developer to update drawings showing the final design integration of the Owner's revised existing artwork locations on Levels 5 and 6 of the Project.<sup>267</sup>

The January 16 Tolling Agreement was executed on January 16, 2019, with the Change Directives to be resolved no later than March 22, 2019.

---

<sup>265</sup> Please see Attachment 366, 366a and 366b.

<sup>266</sup> Please see Attachment 367, 367a, 367b and 367c.

<sup>267</sup> Please see Attachment 368.

Developer participated in a meeting with the Owner concerning Change Directive 20 on January 17, 2019, to discuss the Phase 1 art relocation including façade murals, gargoyles and paper planes.<sup>268</sup>

Another meeting was held on January 24, 2019, to discuss Phase 1 paper planes relocation with Owner's artist.<sup>269</sup> Yet another meeting was held on January 25, 2019, to discuss exhibit space, lighting design, installation details, gargoyles, paper planes, Phase 2 balustrade art, Phase 3 and 4 areas, and plaque requirements.<sup>270</sup>

On January 30, 2019, the Owner issued correspondence updating the existing art reinstallation specification document with the previously discussed recess and reveal dimensions.<sup>271</sup>

Developer participated in a meeting with the Owner concerning Change Directive 20 on February 06, 2019, to discuss Phase 2 Spirit of the People art and its lighting, additional art, balustrade, information desk, Jeppesen Exhibit display cases, and previous meetings open items.<sup>272</sup> Another meeting was held on February 12, 2019, to discuss Phase 2 Spirit of the People art, Phase 2 balustrade, Phase 3 Jeppesen Artifacts, In Peace and Harmony with Nature art, and previous meetings open items.<sup>273</sup> Yet another meeting was held on February 20, 2019, to discuss Phase 2 balustrade art installation and previous meetings' open items.<sup>274</sup>

Developer participated in a meeting with the Owner on February 26, 2019, to discuss Exhibit Space, America Why I Love Her art, Jeppesen Statue, Artifacts Display, Children of the World art, and previous meetings open items.<sup>275</sup> Yet another meeting was held on March 11, 2019, to discuss again the Exhibit Space, America Why I Love Her art, Jeppesen Statue, Artifacts Display, Children of the World art, and previous meetings open items.<sup>276</sup>

---

<sup>268</sup> Please see Attachment 369.

<sup>269</sup> Please see Attachment 370.

<sup>270</sup> Please see Attachment 371.

<sup>271</sup> Please see Attachment 372 and 372a.

<sup>272</sup> Please see Attachment 373 and 373a.

<sup>273</sup> Please see Attachment 374.

<sup>274</sup> Please see Attachment 375.

<sup>275</sup> Please see Attachment 376.

<sup>276</sup> Please see Attachment 377.

After several meetings to clarify and define the scope of changes, Developer submitted a PCE on March 08, 2019.<sup>277</sup>

On March 11, 2019, the Owner issued details about the Owner's existing art relocation requirements associated with Change Directive 20.<sup>278</sup> Therein, it was explained by the Owner that additional collaboration would be required by the Developer to complete the program requirements. The Owner would continue to meet with the Developer during the previously scheduled design review meetings to resolve any scope of Work questions.

On March 15, 2018, the Owner issued correspondence providing scope clarification<sup>279</sup>:

- Updated drawings showing the final design integration of the Owner's revised existing artwork locations on Levels 5 and 6 of the Project. The existing artwork locations have been revised due to changes in the base Project design, wall layouts and Owner direction.
- Pursuant to a previous Change Directive 20 update, Developer was directed to integrate the existing eight Jeppesen Exhibits display cases into the Project design scope. The Owner hereby directs Developer to design and construct two sliding glass front display cases in the International Arrivals area of Level 5 for the Jeppesen Foundation artefacts.
- Pursuant to this updated Change Directive, the Owner hereby directs Developer to make certain design changes to the North Terminal design in areas currently labeled at "Circulation" between column lines N39 and N40 on both sides of the walkway to Concourse A. These areas have been identified for future art gallery spaces and the Owner requires design changes to these two spaces as a part of Developer's scope of Work for the Project.

In response to the revised scope, the Developer provided a revised PCE on March 19, 2019, (following a meeting with the Owner and Developer to discuss pricing after the new inputs received on March 15, 2019 from the Owner<sup>280</sup>). The Owner again changed the scope of Change Directive 20 by removing some scope on March 21, 2019.<sup>281</sup>

The Change Directives, including this Change Directive 20, were not resolved as of March 22, 2019, as intended in the January 16 Tolling Agreement. The First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

---

<sup>277</sup> Please see Attachment 378. Additional PCE was provided on March 19, 2019 and March 25, 2019. Please see Attachment 378a and 378b.

<sup>278</sup> Please see Attachment 379 and 379a.

<sup>279</sup> Please see Attachment 380, 380a, 380b, 380c.

<sup>280</sup> Please see Attachment 378a.

<sup>281</sup> Please see Attachment 381.

Developer participated in a meeting with the Owner on March 22, 2019, to discuss updates to action items from the previous ten meetings with a general overview of all the pending art elements.<sup>282</sup>

A further revised PCE for Change Directive 20 was provided on March 25, 2019.<sup>283</sup>

Developer participated in a meeting with the Owner on April 04, 2019, to discuss lighting design, escalator art, experimental aviation and America, Why I Love Her art.<sup>284</sup>

The Change Directives were not resolved as of April 15, 2019, as contemplated by the First Extension of Tolling Agreement. The parties subsequently signed the Second Extension of Tolling Agreement and Mediation Agreement.

On April 18, 2019, Developer issued further correspondence providing the Owner with updates regarding the Developer's implementation of this Change Directive since the Owner had not provided any further guidance on its requirements for this Change Directive.<sup>285</sup>

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>282</sup> Please see Attachment 382.

<sup>283</sup> Please see Attachment 378b.

<sup>284</sup> Please see Attachment 383.

<sup>285</sup> Please see Attachment 384.

## **I. Change Directive 21 – DEN Restroom Upgrades to Change Directive #05**

Developer received Change Directive 21 on December 5, 2018 (the “**Change Directive**” or “**Change Directive 21**”).<sup>286</sup>

Change Directive 21 concerns the restroom upgrades to be made in addition to those already addressed in earlier Change Directive 5. Change Directive 5 was issued on March 09, 2018<sup>287</sup> and directed Developer “to revise the public restroom facilities design, incorporating the DEN 2018 Restroom Design Standards”.

Below is a graphic illustrating the key dates for Change Directive 21. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 21.

---

<sup>286</sup> Please see Attachment 82.

<sup>287</sup> Please see Attachment 61.

**REDACTED**

Change Directive 5 was previously reduced to an agreed upon Change Order (11) in January 2019. Part of Change Directive 21 modifies the terms of Change Order (11) and also seeks to close out certain items that still had not been resolved as part of Change Directive 5.

The areas of the Terminal affected by Change Directive 21 are the restrooms in both Level 5 and 6, except those included in Change Directive 7.

The design disciplines affected by Change Directive 21 are all disciplines related to the restrooms, which includes Architectural layout, material and finishes; bathroom fixtures; and all mechanical, electrical and plumbing layout, equipment and fixtures, related to the updated elements.

Change Directive 5 directed the Developer to change the Project bathrooms according to new design guidelines. As of December 2018 there were still many Change Directive 5 topics opened and under discussion, because as the Change Directive 5 itself anticipates, “The standards should be interpreted as a baseline for the design team”. So Developer requested to close out some of the (partial) agreements on Change Directive 5 with the execution of a Change Order, so the design could move forward with the frozen layout; and the pending elements that were still under discussions would be addressed under a new Change Directive. This resulted in Change Order 11 being signed on January 8, 2019.<sup>288</sup> This was important, because for designers to be able to progress in all disciplines, layout need to be frozen, so the BIM Model can be updated architecturally and then MEP can be designed.

Thereafter, the Owner issued Change Directive 21 on December 05, 2018,<sup>289</sup> with the following main topics:

- Upgrade toilet partitions. Specific design criteria to be validated through Executive Design Review (EDR) process.
- Upgrade to new toilet accessories.
- Remove Electric Hand Dryers.
- Revise floor material from tile to Baseline Terrazzo.
- Revise the accent wall from painted gypsum water board to the baseline terrazzo. (The accent wall was later upgraded to Solid Surface wall).
- All other toilet fixtures to be validated through the EDR process.

---

<sup>288</sup> Please see Attachment 389, January 8, 2019, Change Order 11.

<sup>289</sup> Please see Attachment 82, December 05, 2018, Change Directive 21.

The main issue in respect of this Change Directive (apart from the fact that it was required to be issued to complete the unresolved items from Change Directive 5 and also reopened parts of Change Directive 5 that had been closed through Change Order 11) is that toilet partitions and fixtures are required to be approved through an Executive Design Review process. Although this Change Directive was not subject to the EDR standards, the Owner attempted to thrust such standards and requirements into the Change Directive process via this Change Directive.

The failure of the Owner to adhere to the original EDR process is examined in the Developer's Relief Event 11. The Owner's direction that this Change Directive be subject to another EDR process, when nothing from this Change Directive was ever contemplated within the original EDR process, is striking because the mixture of the failed EDR process with Change Directives mixes concepts not contemplated at the time of contracting. Nonetheless, the Developer performed the so-called "EDR process" with the Owner for this Change Directive and is now seeking appropriate compensation for doing so. Moreover, items that were already agreed upon by the Owner as part of Change Order 11 are being re-modified as part of this Change Directive (e.g. previously selected sinks from the Owner are modified by this Change Directive to a continuous solid surface trough sink configuration).

On January 15, 2019, correspondence was issued by Developer requesting confirmation from the Owner on which restroom fixtures had been selected.<sup>290</sup> This information was necessary in order to complete Developer's PCE.

The January 16 Tolling Agreement was executed on January 16, 2019, with the Change Directives to be resolved no later than March 22, 2019.

A PCE was provided on February 21, 2019.<sup>291</sup>

On February 25, 2019, Developer met with the Owner during an Executive Design Review meeting to review open items in respect of Change Directive 21, including restroom fixtures and accent walls, and

---

<sup>290</sup> Please see Attachment 390.

<sup>291</sup> Please see Attachment 391.

to continue evaluating different fixture alternatives.<sup>292</sup> Owner requested eight new options for the presented elements. This request was addressed by Developer and PCE was updated diligently on March 8, 2019<sup>293</sup>, “in preparation for Monday’s (3/11) EDR meeting”, and then again on March 14, 2019<sup>294</sup>, for March 15, 2019 EDR, to allow the Owner making informed decisions.

Follow up EDR meetings were then held on March 11, 2019<sup>295</sup> and again on March 15, 2019<sup>296</sup> to continue to discuss the Change Directive fixtures and alternatives. Owner re-opened previous agreements (selected sinks to a continuous solid surface trough sink configuration), requested more options to two elements, expressed their preference “to return to terrazzo or solid surface” and opened the discussion to new elements (push button automatic opener for family restrooms, alternative flooring under urinals, the latter being abandoned on a later stage).

The Change Directive was not resolved as of March 22, 2019, as contemplated in the January 16 Tolling Agreement. The First Extension of Tolling Agreement was executed on March 22, 2019, extending resolution of the Change Directives until April 15, 2019.

On March 25, 2019, a new Preliminary Change Estimate for Change Directive 21 was provided, to address the new scope, including a revised detail breakdown (v2).<sup>297</sup>

The Change Directives were not resolved as of April 15, 2019, as contemplated by the First Extension of Tolling Agreement. The parties then entered into the Second Extension of Tolling Agreement and Mediation Agreement.

On April 12, 2019, Developer sent transmittal<sup>298</sup> in which it was noted that Developer “is seeking confirmation from the Owner for [Developer’s] trough sink proposal and a preferred option for the mirrors.

---

<sup>292</sup> Please see Attachment 392, February 25, 2019, EDR Meeting Minutes.

<sup>293</sup> Please see attachment 391v2.

<sup>294</sup> Please see attachment 391v3, March 14, 2019, Developer mail, “RE: HOLD: EDR”.

<sup>295</sup> Please see Attachment 393, March 11, 2019, EDR Meeting.

<sup>296</sup> Please see Attachment 394, March 15, 2019, EDR Meeting.

<sup>297</sup> Please see Attachments 391a and 391b.

<sup>298</sup> Please see Attachment 387.

[Developer] would need the confirmation by April 16 so the design can be implemented in the upcoming PH1 Modified drawings”.

On April 26, 2019, as no answer was received by the Owner, correspondence<sup>299</sup> was issued informing the Owner on how Developer is moving forward with the design of Change Directive 21: “As [Developer] didn’t receive an answer by April 16th, [Developer] has proceeded with the design of the PH1 modified drawings submittal including Change Directives 1-29 with the option Divided Mirror 02”.

Finally, on April 29, 2019 Owner responded, “DEN confirms the proposed Trough Sink and the Divided Mirror 02 rendering (two vertical lighting strips) is acceptable.”

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>299</sup> Please see Attachment 387a.

**m. Change Directive 22 – Change Wall Finish to Acrylic Solid Surface Material Panels**

Developer received Change Directive 22 on February 13, 2019 (the “**Change Directive**” or “**Change Directive 22**”).<sup>300</sup>

Change Directive 22 directed the change of the walls with glass, compact laminate and Acrovyn panel finish to acrylic solid surface material panel finish.

The areas of the Terminal affected by Change Directive 22 are several walls along Level 5 and 6. In total this change affected over 200,000 square feet of wall finish throughout levels 5 and 6 of the Terminal.

Below is a graphic illustrating the key dates for Change Directive 22. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 22.

---

<sup>300</sup> Please see Attachment 84.

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

This Change Directive modifies a portion of Change Order 3, and Change Order 3 was approved on August 3, 2018. This is an example of how even Change Orders that are thought to be final are reopened leaving Developer in a position of constant flux. Change Order 3 closed Executive Design Review 1 – Airline Pods Walls. Thereafter, the Developer incorporated the design agreed to as part of the closed out EDR 1 in its Phase 1 Combined Submission, which was permitted in November 2018. Per Change Order 3, the walls were supposed to be compact laminate (Trespa). However, post-permit, this Change Directive modified the walls to a solid surface material.

This Change Directive was to change the walls from glass, compact laminate, and Acrovyn to acrylic solid surface material.<sup>301</sup>

On August 16, 2018, Developer submitted the Combined Phase 1 IFC Submission to the City and the Owner.<sup>302</sup> This included a complete design of the Phase 1 Architectural design, including the wall details for Acrovyn/Laminate.

On September 20, 2018, correspondence was provided by the Developer to the Owner with finishes plans for Levels 5 and 6 to inform the Owner of the locations of the Acrovyn/Laminate.<sup>303</sup>

On September 20, 2018, the Owner responded that it was looking for the square footage of Acrovyn as well a cost per square foot for both the Acrovyn and the Compact Laminate for the Owner to evaluate if the Owner wanted to substitute material anywhere outlined in the drawing.<sup>304</sup>

On November 16, 2018, Developer participated in an Executive Design Review meeting to review materials EDR 1 B & C – Airline Pod Walls, a part of that meeting was to review and select the color of the Acrovyn Wall Panel. During this meeting, the Owner did not approve the use of Acrovyn (which material was included as part of the Developer's base scope).<sup>305</sup>

---

<sup>301</sup> Please see Attachment 402.

<sup>302</sup> Please see Attachment 49.

<sup>303</sup> Please see Attachment 395 and 395a.

<sup>304</sup> Please see Attachment 396.

<sup>305</sup> Please see Attachment 397.

On November 19, 2018, the City approved the Combined Phase 1 IFC Submission submitted by Developer on August 16, 2018.<sup>306</sup> With this permit the Developer could have proceeded with the construction and installation of the design including the Acrovyn/Laminate.

Developer participated in another Executive Design Review meeting on November 20, 2018, to review public finishes including Airline Pods (EDR 1), service pods, column cladding, the TSA boundary wall (EDR 2), restroom walls, façade composite panels and the FOH wall finishes.<sup>307</sup>

Developer delivered its Phase 2 100% IFR packages to the Owner on December 5, 2018,<sup>308</sup> which also contained the design details for Acrovyn Wall Panels.

On December 07, 2018, Developer participated in an Executive Design Review meeting to review public finishes including general walls, accent walls, service pods at check-in area and exterior walls.<sup>309</sup>

On December 13, 2018, Developer participated in another Executive Design Review meeting in New York City.<sup>310</sup> Also during this meeting, some options using 3D solid surface (KRION) were presented and Owner provided positive feedback to these alternates.

That same day the Owner issued an email correspondence confirming they intended to change from Acrovyn to Solid Surface.<sup>311</sup>

On December 21, 2018, Developer submitted the Phase 3 and Phase 4 90% packages to the Owner.<sup>312</sup> These packages maintained the same Acrovyn construction details as the previous packages because official direction to change had not been sent by the Owner.

The January 16 Tolling Agreement was executed on January 16, 2019, with resolution of the Change Directives to occur by March 22, 2019.

---

<sup>306</sup> Please see Attachment 385.

<sup>307</sup> Please see Attachment 398.

<sup>308</sup> Please see Attachment 386.

<sup>309</sup> Please see Attachment 399.

<sup>310</sup> Please see Attachment 400.

<sup>311</sup> Please see Attachment 401.

<sup>312</sup> Please see Attachment 388 and 388a.

On February 13, 2019, the Owner issued Change Directive 22 to modify the wall finish to Acrylic Solid Surface (SS) material panels.<sup>313</sup> This Change Directive expanded on the EDR conversation which related specifically to the walls of the Airline Pods (EDR 1) and the Perimeter Wall of the TSA (EDR 2) to changing the majority of walls in the public spaces of Levels 5 & 6 on the Great Hall.

On February 18, 2019, Developer requested clarification on several elements that were not addressed in Change Directive 22. Specifically, how escalators and elevators, the slab edge, and columns should be finished as these were not specified in the Change Directive or attached drawing.<sup>314</sup>

The Owner responded on February 25, 2019 clarifying the missing information.<sup>315</sup>

The PCE for Change Directive 22 was provided on March 12, 2019, according to the clarifications received on February 25, 2019 with two options:

- A seamless Solid Surface solution. Glue until 12'6" and hanged in partitions higher than that.
- A Solid Surface solution with seams approx. each 5'. Glue until 12'6" and hanged in partitions higher than that.<sup>316</sup>

This PCE was only able to be a rough estimate due to the lack of decision and clarity from the Owner on precisely what the Owner wished to be installed in the Terminal.

The Change Directive was not resolved on March 22, 2019, as intended in the January 16 Tolling Agreement. The First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

On March 25, 2019, the Owner requested Developer to include the four (4) Level 6 Service Pod elements (around cross bracing) using the Acrylic Solid Surface Material Panels set forth in Change Directive 22 in Developer's Preliminary Change Estimate.<sup>317</sup> The Developer provided an updated PCE based on this request on April 17, 2019.<sup>318</sup>

---

<sup>313</sup> Please see Attachment 402.

<sup>314</sup> Please see Attachment 403.

<sup>315</sup> Please see Attachment 403.

<sup>316</sup> Please see Attachment 404a.

<sup>317</sup> Please see Attachment 405 and 405a.

<sup>318</sup> Please see Attachment 404.

Correspondence was issued by the Developer on April 02, 2019, asking for a direction to move forward with the modified Phase 1 design<sup>319</sup> with or without seams solutions were provided, and Developer did not know which one the Owner wanted. This is important information for both the design and construction teams because either system has distinct and unique challenges. For example, the seamed system is less challenging to install but requires greater coordination for the Architectural team to locate the best visual pattern of the joints. On the other hand, the seamless system requires greater skill and effort during installation because every joint need to be sealed and sanded.

That same day, the Owner issued correspondence stating that the Owner was still reviewing the information.<sup>320</sup> The Owner had received the pricing options for both seamed and seamless SSM panels in the March 12 PCE.<sup>321</sup> The Owner asserted in its April 2, 2019, correspondence that all Change Directives are required to be resolved by April 15, 2019, so the Owner anticipated providing official direction no later than that date (2 weeks from the date of the correspondence). This Change Directive was impacted by previous Change Directives 20 and 21 received so they all had to be implemented at the same time.

The Change Directive was not resolved as of April 15, 2019, as intended per the First Extension of Tolling Agreement. The parties then executed the Second Extension of Tolling Agreement and Mediation Agreement.

On April 18, 2019, correspondence was issued informing the Owner of how the Developer intended to move forward given the lack of direction from the Owner.<sup>322</sup>

As of the date hereof, this Change Directive has an impact in the critical path of the design and construction schedule of 250 calendar days. Please see Attachments 4 and 4a. Please also see Attachment 3.

As FTI explains:

---

<sup>319</sup> Please see Attachment 406.

<sup>320</sup> Please see Attachment 406.

<sup>321</sup> Please see Attachment 404a.

<sup>322</sup> Please see Attachment 384.

Change Directive 22 from DEN required [Developer] to change the originally specified Acrovyn wall coverings to solid surface panels within the Terminal. The scope of the solid surface installation process is a more complex and lengthier installation than was that [sic] originally specified. As a result of this change in scope, [Developer's] schedule has been delayed due to the change to these solid surface panels for three phases of the work. This has had a critical path impact of 250 calendar days in the design and construction schedule.<sup>323</sup>

---

<sup>323</sup> Please see Attachment 3 at pg. 10. Please also see pp. 50-59.

**n. Change Directive 23 – Design for Water Connection**

The Developer received Change Directive 23 on February 23, 2019 (the “**Change Directive**” or “**Change Directive 23**”).<sup>324</sup>

Change Directive 23 directs the Developer to modify the design of the domestic water connection to the Denver Water Line. In particular, in the Change Directive, the Owner directed the Developer to make changes to the North East area outside of the Terminal building and to modify the route for the water pipe to the mechanical room on Level 4 which differed from what was originally agreed in the Scope of Works.

Below is a graphic illustrating the key dates for Change Directive 23. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 23.

---

<sup>324</sup> Please see Attachment 85.

**REDACTED**

The original Change Directive 23 was provided toward the end of the Developer's design process (after Phase 1 had been permitted, advanced submissions for subsequent Phases had already been provided, and even after the January 16 Tolling Agreement). It was issued by the Owner in an effort to reduce the Owner's water tap fee for the Project. Similar to other Change Directives, this Change Directive when issued was vague and imprecise and it subsequently took several months and various meetings not only between the Owner and Developer, but also with other Governmental Entities, to reach partial resolution with the Owner regarding the scope of Work required by this Change Directive. Certain modifications and clarifications regarding this Change Directive continue to be pending.

This Change Directive impacts the civil works outside of the Terminal and the plumbing system, including piping, meters and other elements such as valves, backflow preventers and the connection to the drainage system. The specific location on the Project Site is the North East area outside of the Terminal building and it is identified in green in the image below together with an aerial image.

**REDACTED**

The design implemented (starting from the very early stages of the Project) for the domestic water connection, from the Denver Water Line (Denver Water is the municipality organization that oversees and controls the water utilities for the Project, alongside Denver Wastewater Management) to the Terminal Building, consisted of one 6" pipe. This approach was consistent both with the expected flow requirements as per Owner Design Standard Manual included in the Agreement as well as with the existing water connection to the Terminal.

On August 16, 2018, Developer submitted its design for the Combined Phase 1 IFC Submission to the City and the Owner, which design included this water connection<sup>325</sup>. The City approved Developer's backflow preventer package with partial scope for the water connection design on September 10, 2018.<sup>326</sup>

On November 1, 2018, the Sewer Use and Drainage Permit (SUDP) from the City Development Services provided comments to the Combined Phase 1 IFC Submission,<sup>327</sup> stating that for a proposed 6" domestic water meter Developer needs to provide the expected discharge concentrations in the water (Biochemical Oxygen Demand, Suspended Solids, and Total Kjedahl Nitrogen) along with flow rates (gallon per day peak month) to calculate the appropriate domestic water meter. This required information could only be provided by based on historical information and analytics.

SUDP stated that minimum values shown on the SUDP fee schedule (available online) would not apply to the proposed structure. Since these values could only be provided by the Owner, the Developer immediately requested this information from the Owner in correspondence on November 16, 2018 and November 19, 2018.<sup>328</sup>

Additionally, the water meter has a direct relation to the sanitary fee. The City also warned that "Sanitary connection fees for a 6-inch domestic water tap are very high".

---

<sup>325</sup> Please see Attachment 49, August 15, 2019, Combined IFR-IFC Submission to the Owner.

<sup>326</sup> Please see Attachment 385.

<sup>327</sup> Please see Attachment 407, November 1, 2018, SUDP Comments from City Development Services.

<sup>328</sup> Please see Attachment 385a.

In parallel and because the Owner is responsible for the payment of utilities related fees per Section 4.8.5 of the Agreement, the Developer informed the Executive Team of the Owner, on November 8, 2018, about the anticipated high cost and its implications:

SUDP and the Building Department are concerned that DEN will not agree with the 6 inch water tap [fee] once they get the Metro District Fee. They anticipated anecdotally that the fee will be around \$2 million. [They] have reached out to Stu Williams [Owner's SVP Special Projects] and others with DEN in order to make DEN aware of how high this fee could possibly be and get confirmation from DEN in the form of a letter or a reply email that DEN is prepared for the impact of this fee.

Without resolution of this issue and issuance of the SUDP permit, **the Phase 1 permits will not be issued by the building department.**<sup>329</sup>

The City approved Developer's Combined Phase 1 IFC Submission on November 19, 2018.<sup>330</sup>

Developer submitted its Phase 2 100% IFR package to the Owner on December 5, 2018.<sup>331</sup>

Developer's Phase 3 and Phase 4 90% packages were delivered to the Owner on December 21, 2018.<sup>332</sup>

On December 21, 2018, Developer submitted to the Owner the necessary documents to respond to the SUDP comments, for official review and approval, and then submission to the City.<sup>333</sup>

But the Owner, who pursuant to the terms of the Agreement is responsible for paying the water tap fee, and concerned about the unexpected high water tap fee, asked that these documents not be officially transmitted to the City; the Owner had the intention to analyze other options and discuss the water tap fee with the City first. Thus, the Developer delayed its submission of the noted Phases 2, 3 and 4 submissions to the City per the Owner's request.

At this stage, all the Developer design for Phase 1 was approved by the City (and the rest of the Phases design were in a very advanced stage), except for the SUDP. Due to the lack of approval for SUDP, the Developer's required plumbing permit was also on hold. Moreover, the Developer's Concessions

---

<sup>329</sup> Please see Attachment 385b.

<sup>330</sup> Please see Attachment 49.

<sup>331</sup> Please see Attachment 386.

<sup>332</sup> Please see Attachment 388 and 388a.

<sup>333</sup> Please see Attachment 408.

construction permits, which were otherwise approved by the City, were also on hold because they are linked to the main Project by SUDP.

On January 14, 2019, correspondence was issued by Developer, following up on the information previously provided by the Developer on December 21, 2018 and proposing three water sewer tap options for the Owner to confirm the preferred one and respond to SUDP as soon as possible.<sup>334</sup> In view of the fact that Owner was not giving a clear direction, or taking any action with the City, Developer requested Owner confirmation of the sewer tap fee by January 15, 2019, in order to submit the responses to SUDP by January 18, 2019.

The January 16 Tolling Agreement was executed on January 16, 2019. Therein, the water tap fee was specifically called out as an item to be resolved on or before February 25, 2019. At this point in time, the water tap fee was not a Change Directive.

On January 31, 2019, a meeting was held with the Owner, Developer, and various City divisions to discuss the water tap fee.<sup>335</sup> During this meeting, the Owner presented their preferred option for the water tap fee, which was different from the original design. The new concept consisted of two 4" water taps to the building, instead of only one 6" pipe, among other deviations.

The City stated that the solution proposed by the Owner was not following code. Therefore, if the Owner would like to get an approval of this new domestic water tap design, the Owner would need to submit a Request for Variance to the City. The City also confirmed that Developer's Phase 1 plumbing and grease interceptor design packages would not be approved until a resolution about the fee was received. It was stated that the fee for a 6" domestic water tap could cost \$8,000,000, and the City needed confirmation from the Owner about the Owner's proposed approach.

---

<sup>334</sup> Please see Attachment 409.

<sup>335</sup> Please see Attachment 410.

On February 5, 2019, the Owner issued correspondence instructing the Developer to provide the set of documents that were already submitted on January 11, 2019.<sup>336</sup> The transmittal indicated that the Owner would use that information for the Request for Variance.

On the same date, February 5, 2019, the Developer responded to the Owner's correspondence.<sup>337</sup> In response to the Owner's specific statement in the February 5 correspondence that "DEN is not aware of this progress set of design documents that reflect incorporating the previous comments from Denver Water," Developer referred the Owner to the earlier January 14, 2019, correspondence where the status of the SUDP documents that were previously submitted to the Owner on December 21, 2018, was explained. In response to the Owner's statement in the February 5 correspondence, "Please provide this set of IFC documents to DEN through Aconex no later than 2/4/19." Developer clarified that this set of IFC documents had already provided as part of the above referenced transmittals. The only document that was a design in-progress at that time was the implementation of Denver Water comments. The transmittal was closed by confirming that Developer's current design is compliant with the Agreement Technical Requirements and is ready to be submitted to Denver Water for approval.

The Owner issued Change Directive 23 on February 13, 2019, for Developer to produce the Request for Variance and incorporate it in a future Phase 1 design resubmittal.<sup>338</sup> This Change Directive was issued nearly one month after the January 16 Tolling Agreement in which the parties had already acknowledged the need to close out the Change Directives previously pending. To continue to issue additional Change Directives even after that tolling agreement was doubly harmful and disruptive by the Owner.

In addition to all the other Change Directives issued after receipt of the Phase 1 construction permit in November 2018, this Change Directive underscores that Developer's plan to resubmit for a revised Phase 1 permit in February 2019 (as planned as part of the Combined Phase 1 IFC Submission mitigation agreement) was foiled by the Owner's Change Directives. The Owner acknowledged in the text of Change

---

<sup>336</sup> Please see Attachment 411.

<sup>337</sup> Id.

<sup>338</sup> Please see Attachment 412.

Directive 23 itself that a future resubmittal for Phase 1 was required. Developer submitted the Phase 1 modified drawings on June 4, 2019.

The design related to the water connection that was already approved by the City (Back Flow Preventer package from September 6, 2018, and the Combined Phase 1 IFC Submission on November 19, 2018) had to be completely redesigned, reviewed by the Owner, resubmitted, and re-permitted.

Once this issue became a Change Directive, it fell under the Change Directives portion of the January 16 Tolling Agreement and should have been resolved no later than March 22, 2019.

The Developer submitted two options for the design of this Change Directive 23 on February 27, 2019.<sup>339</sup>

On February 28, 2019, the Owner requested minor adjustments to Developer's transmittals from February 27, 2019.<sup>340</sup>

A PCE for Change Directive 23 was provided on March 11, 2019.<sup>341</sup>

On March 12, 2019, correspondence was issued by Developer with the Request for Variance agreed to in the Change Directive 23 meeting on January 31, 2019 to be submitted by the Owner to Denver Water.<sup>342</sup> Developer had made clear to the Owner in a meeting with the City and the Owner, on March 19, 2019,<sup>343</sup> that the Request for Variance included only conceptual design/sketches, to get the pre-approval by the City, followed by development the design to the final stage, and then to be submitted officially.

On March 15, 2019, the Owner issued correspondence<sup>344</sup> stating that the Owner had conducted a preliminary review of Developer's waterline submittal and had identified a number of minor inconsistencies that required correction. In the interest of time, the Owner recommended proceeding with submittal of the package for Permitting (Developer) and Design Deviation Requests (Owner). The Owner continued therein

---

<sup>339</sup> Please see Attachment 413 and 413a.

<sup>340</sup> Please see Attachment 414.

<sup>341</sup> Please see Attachment 415. Additional PCEs were provided on March 19, 2019, March 25, 2019 and April 17, 2019. Please see Attachments 415a, 415b and 415c.

<sup>342</sup> Please see Attachment 416, 416a, 416b, 416c and 416d.

<sup>343</sup> Please see Attachment 416e.

<sup>344</sup> Please see Attachment 417.

that it would conduct a formal design review of the submittal and return comments to Developer no later than March 19, 2019. The Owner then strongly recommended a comment resolution session be conducted immediately after comments are submitted to ensure comments are resolved quickly.

The Owner submitted to the City the Request for Variance<sup>345</sup> prepared by Developer on March 15, 2019 (with several items that do not follow Denver Water Standards), as explained above and as per the Owner comments received in the meeting held on January 31, 2019.

In parallel with receiving such variance from the City, on March 18, 2019, the Developer provided a response to the Owner's March 14 correspondence regarding the inconsistencies that the Owner noted in the Developer's waterline submittal design.<sup>346</sup> Since that information was prepared in conjunction with the Owner during several meetings after receiving Change Directive 23, Developer requested identification of the claimed inconsistencies that require minor correction. Developer also clarified, once again, that the sketches/drawings were just conceptual to get the approval of the variance and they reflected the preferred options from the Owner. The sketches were never intended to be a final package to have the issuance of the permit from the City. Developer confirmed that the package would require a lot more work to be done. Developer advised that it would proceed with the final design as soon as the variance is approved from Denver Water since the concept presented, according to the Owner's instruction during the Change Directive 23 meetings, is not 100% compliant with Denver Water's requirements, as per January 31, 2019 meeting.<sup>347</sup> In summary, the Developer would not, in the interest of the Project, submit a non-code compliant design with Denver Water without a clear pre-acceptance from the City and the granting of the variance.

A revised PCE was submitted by the Developer to the Owner on March 19, 2019, following meetings with the Owner and Developer to discuss pricing on March 15, March 18 and March 19, 2019. The Owner requested clarifications on March 21, 2019.<sup>348</sup>

---

<sup>345</sup> Please see Attachment 418.

<sup>346</sup> Id.

<sup>347</sup> Please see Attachment 410.

<sup>348</sup> Please see Attachment 419 and 419a.

The Change Directives (including this new one) were not resolved as of March 22, 2019. The First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019.

An additional revised PCE was provided on March 25, 2019.<sup>349</sup>

The Owner provided email correspondence with comments from Denver Water on April 8, 2019.<sup>350</sup> Therein, the Owner stated that it will not review the Request for Variance until the design is being implemented.

On April 11, 2019, correspondence was issued confirming that based on the Owner's email from April 8, 2019, Developer is proceeding with the Phase 1 modified drawings as per the Request for Variance instructed by the Owner that includes the proposal Option 2 and 3 backflow preventers to discharge the water if needed to the North Storm water drain approved by City.<sup>351</sup> This design is according to the Owner's direction. Developer explained that if Denver Water decides to proceed in a different way with this variance in the future, the design will have to be modified again and Change Directive 23 will have to be revised to include the associated design and schedule impacts.

On April 12, 2019, the Owner issued correspondence including questions the Owner had provided to Denver Water with respect to the variance status.<sup>352</sup> Comments from the City include that the meters are to be in one vault, and this vault should be located in relatively close proximity to the roadway. The Owner directed that Developer should be proceeding on final design based upon previous correspondence.

Although the Change Directives were intended to be resolved no later than April 15, 2019, per the First Extension of Tolling Agreement, the Change Directives were not resolved as of that date. The parties subsequently executed the Second Extension of Tolling Agreement and Mediation Agreement.

---

<sup>349</sup> Please see Attachment 415b.

<sup>350</sup> Please see Attachment 420.

<sup>351</sup> Please see Attachment 421.

<sup>352</sup> Please see Attachment 422.

Following all the foregoing, Developer then had to submit a revised PCE on April 17, 2019,<sup>353</sup> including the Owner's latest request.

On April 18, 2019, the Owner issued correspondence requesting to show the shared bypass (total of 3) on the resubmittal of the back flow preventer. This correspondence notes that the variance approval will come in a formal letter once resubmittal has occurred. The Owner continued that it believed Denver Water has now commented on all Request for Variances, and Developer can complete design for resubmittal and permitting.

Developer responded on the same day that Developer will move forward with the design as per direction provided by the Owner on April 12, 2019, and the preliminary design submitted for the variance to Denver Water. As discussed with the Owner during a weekly meeting on April 16, 2019, Developer submitted the new design on June 4, 2019.<sup>354</sup>

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>353</sup> Please Attachment 415c

<sup>354</sup> Please Attachment 415d.

#### **o. Change Directive 24 – AGTS Pipes**

Developer received Change Directive 24 on February 13, 2019 (the “**Change Directive**” or “**Change Directive 24**”).<sup>355</sup>

Change Directive 24 requires a change to the design of the utilities piping/conduits routing across the AGTS tunnel to avoid utility penetrations though the AGTS tunnel space. Similar to Change Directive 23, this Change Directive was first identified as an issue requiring resolution in the January 16 Tolling Agreement. Rather than resolving the issue, the Owner attempted to just shift the issue into a different category, and converted this issue to a Change Directive (which was to be resolved by March 22, 2019, instead of the issue’s original intended resolution date of February 15, 2019, per the January 16 Tolling Agreement).

The areas of the Terminal affected by Change Directive 24 are initially the Level 3 and 4 in the center area of the Terminal (between gridlines W3-E3), but depending on the final piping layout, this Change Directive could affect also other levels and areas.

Below is a graphic illustrating the key dates for Change Directive 24. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 24.

---

<sup>355</sup> Please see Attachment 86.

**REDACTED**

**REDACTED**

The disciplines affected by Change Directive 24 are all disciplines related to the utilities that should be provided to the Concessions spaces that are located in the central area; therefore, all electrical and IT, plumbing (including domestic water, drainage and grease waste) and fire protection piping and conduits.

The Owner provided this Change Directive late in the Developer's design process and, due to the extent of the changes required, it impacts the Developer's work that had already been permitted for construction in November 2018. In addition, the Owner provided updated requirements after the Change Directive issuance, and several meetings were required between the Owner and the Developer in order to understand all the requirements for the implementation of the change. In particular, this Change Directive affected all the concessions located in the Airside Plaza and in the Landside in Level 5 because of the works to be performed in Level 3 and Level 4.

Prior to the Change Directive issuance, the Owner first expressed its intention that the utilities' pipes would go under the AGTS tunnel in the comments it provided to the 30% design package submission for all the Phases of the Project, see comments 1022, 1026, 1030, 1033:

No piping shall run through the AGTS tunnel.

The Owner's efforts to implement changes via the comment resolution process has been a consistent problem and underscores a lack of understanding of not only the comment resolution process but also the role of Change Directives on the Project. It is not reasonably disputed that Owner Changes are properly communicated or directed via comment resolution meetings. Quite the contrary, Owner Changes are required to be issued in accordance with the Owner Change Procedure set forth in Appendix 12 of the Agreement.

The Owner provided similar comments (20 times) to the 60% Design Development package on May 07, 2018.<sup>356</sup>

---

<sup>356</sup> Please see Attachment 424.

Developer responded on May 24, 2018,<sup>357</sup> to all these comments with the status “E” (exception, needs resolution), or in yellow, meaning “discussion required”.

Owner responded on June 1, 2018<sup>358</sup> with the response to Developer’s status of these comments and changed the status of these comments to “Open.”

The Owner provided “DEN’s final opinion on the Design Comment Resolution Log” by June 27, 2018,<sup>359</sup> but again on July 20, 2018, the Owner then attempted to provide new comments stating, “The attached spreadsheet represents DEN’s Final Position on the Design Comment Resolution comments.”<sup>360</sup>

At this point, the Owner should have realized that if the Owner wanted this Change incorporated into Developer’s design, then the Owner was required to issue an Owner Change. **Instead, the Owner waited to issue this Change Directive until February 2019, at a time when the Owner should have been dedicating resources to closing out the other Change Directives that had already been issued on the Project and that were already having an impact (as demonstrated by the fact that the parties agreed that the Change Directives needed to be resolved by March 22, 2019, in the January 16 Tolling Agreement).**

On August 16, 2018, Developer submitted the Combined Phase 1 IFC Submission to the City and the Owner. This package was approved by the City on November 19, 2018.

Developer expressed concern about how the comment resolution process was being managed on August 24, 2018.<sup>361</sup>

Following these events, in many other meetings with the Owner, Developer has stated repeatedly that if a different solution from the original design was required to the pipes and conduits through the AGTS tunnel, a Change Directive was to be issued by the Owner.

---

<sup>357</sup> Please see Attachment 424a.

<sup>358</sup> Please see Attachment 424b.

<sup>359</sup> Please see Attachment 424c.

<sup>360</sup> Please see Attachment 424d.

<sup>361</sup> Please see Attachment 424e.

But the Owner, as late as February 2019, still did not appear to fully understand the Change process as outlined in Appendix 12 of the Agreement. Notably, the Owner stated, "Please issue to DEN an 'Owner Change' Request per the procedure outlined in Appendix 12 of the DA. DEN desires more information regarding the cost impact for this potential change." It is clear that Appendix 12 of the Agreement does not authorize Developer to issue a Change Request; instead, it is the Owner who would issue a Change Request, if the Owner (responsibly) determined that it desired more information but was uncertain as to whether or not a specific Change was actually desired. Developer responded:<sup>362</sup>

Only the Owner reserves the right to make changes in the Work in accordance with the Owner Change procedure set forth in Appendix 12. Therefore, Developer cannot issue an Owner Change because it is not the Owner. If [Owner] desires more information regarding the cost impact for this potential change, [Owner] should issue a Change Request informing Developer of the proposed Owner Change and requesting a Preliminary Change Estimate for such change. As already stated during the comment resolution process and as responded in comment 51, [Developer] will not implement [...] until official direction is received from [Owner].

Resolution of the issue about pipes above the AGTS was included in the January 16 Tolling Agreement, and expected to be resolved by February 15, 2019, according to the terms of that agreement.

On February 14, 2019 – the day before all Change Directives were supposed to be resolved, as noted in the January 16 Tolling Agreement -- the Owner issued Change Directive 24.<sup>363</sup>

This Change Directive was to modify the design that had already permitted by the City in November 2018, over the AGTS platform. The modifications required are:

- All pressurized systems are to be routed around the AGTS tunnel.
- Electrical, data, IT and Low Voltage Systems to be routed around the tunnel.
- Grease lines to be routed North and South with the sub-basement area located between the two tunnels.
- Sanitary lines to be routed North and South with the sub-basement area located between the two tunnels.<sup>364</sup>

---

<sup>362</sup> Please see Attachment 424f.

<sup>363</sup> Please see Attachment 86.

<sup>364</sup> Id.

On February 21, 2019, Developer performed a field verification inside the Terminal on Level 3 at the potential locations to locate two new grease interceptors – one on the Northwest central side and one at the Southwest central – to avoid grease pipelines crossing above the AGTS tunnels and to direct discharge to the four grease interceptors' units located outside the Terminal on the East and West sides.

A PCE was provided on March 08, 2019.<sup>365</sup>

On March 13, 2019, the site verification report from the February 21, 2019, field visit was issued with the proposed locations for the new grease interceptors needed due to Change Directive 24.<sup>366</sup>

The Change Directives, including this Change Directive 24, were intended to be resolved no later than March 22, 2019, per the January 16 Tolling Agreement. This did not occur. The First Extension of Tolling Agreement was executed then executed, extending resolution of the Change Directives until April 15, 2019.

Developer provided a Revised PCE on March 25, 2019.<sup>367</sup>

The next day, on March 26, 2019, the Owner issued a revised Change Directive 24 (rev. 1) fully changing the concept provided for originally in Change Directive 24, due to the high cost to complete the change (even though Owner had been warned of the complexity of the Work).<sup>368</sup> With this revision, the Owner directed the following provisions:

- The grease and sanitary lines may cross through the AGTS corridor. The lines must maintain required clearances within the guideway.
- The grease and sanitary lines are to be routed through a secondary oversized sleeve.
- We anticipate this sleeve to be steel but would like to discuss options with the EOR.
- The secondary sleeve will be integral from side to side of the AGTS (no joints) and sloped to one end to provide positive drainage.
- The secondary sleeve will have leak detection sensors and associated communication.
- Protocols. The sensors would be connected to the nearest Building Management System node. Developer would work with Owner to have the software up dated to recognize the leak detectors.
- Pressurized waterline / liquid systems are not allowed to cross within the AGTS.

---

<sup>365</sup> Please see Attachment 425. Additional PCE were provided on March 25, 2019 and April 16, 2019. Please see Attachments 425a and 425b.

<sup>366</sup> Please see Attachment 426.

<sup>367</sup> Please see Attachment 425a.

<sup>368</sup> Please see Attachment 427.

At the risk of sounding like a broken record, but in an effort to be consistent in the description of the individual Change Directives, it was not April 15, 2019, and the Change Directives had not been resolved, as provided for in the First Extension of Tolling Agreement.

On April 16, 2019, Developer submitted an updated PCE in response to the newly issued version of Change Directive 24.<sup>369</sup> Since this April 16 PCE, it has been verbally communicated by the Owner in a construction administration meeting on May 1, 2019, that the design may once again switch back to the original Change Directive scope.

Developer requested confirmation of this (again) new direction to the Change Directive on May 8, 2019, but the Owner response on May 10, 2019 was, “The Developer shall continue to proceed with the direction/scope provided in the Aconex Email (DEN-EML-001932) revision from Michael Sheehan on March 21, 2019.”<sup>370</sup>

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>369</sup> Please see Attachment 425b.

<sup>370</sup> Please see Attachment 424g.

**p. Change Directive 25 – Delete Terminal Pay and TTY Phones**

Developer received Change Directive 25 on March 25, 2019 (the “**Change Directive**” or “**Change Directive 25**”).<sup>371</sup>

This Change Directive instructed that the current pay phones in the design for the Project Terminal would be replaced with electrical and data connections for new ADA devices. This requires work from the Developer’s design teams to reevaluate the architectural design, the electrical assumptions, and the installation of additional data lines to those locations. This impacts the Great Hall Levels 5 and 6 both inside and outside of the concessions space.

Below is a graphic illustrating the key dates for Change Directive 25. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 25.

---

<sup>371</sup> Please see Attachment 89.

**REDACTED**

Developer issued RFI-0108 on January 14, 2019, concerning Developer's provision of new telephones.<sup>372</sup> During the Executive Design Review 21 meetings, the Owner had expressed that there was no need to include telephones in public areas. As a result of those unofficial expressions, the RFI 108 was issued. Developer requested in its RFI for the Owner to confirm the omission of phones in public areas, or provide clear instructions on this task.

The Parties executed the January 16 Tolling Agreement whereby Change Directives were to be resolved no later than March 22, 2019.

On January 18, 2019, in response to Developer's RFI-0108, the Owner confirmed that pay phones and TTY phones are no longer required.

Correspondence was issued by the Developer on January 24, 2019, advising that the RFI-108 response provided falls under the definition of an Owner Change as set forth in the Agreement, and Developer needed Owner Change from one of the Owner's Authorized Representatives requesting or directing the Developer to implement such change.<sup>373</sup> In the meantime, Developer continued providing new telephones in the public areas as required in the Agreement's FF&E scope and allowance.

The Change Directives were not resolved on March 22. The Parties executed the First Extension of Tolling Agreement on March 22, with the Change Directives to then be resolved no later than April 15, 2019.

Three days after the original March 22 deadline for the Change Directives to be resolved, the Owner issued Change 25 – Delete Terminal Pay and TTY Phones – on March 25, 2019.

On May 22, 2019, Developer issued RFI-0188 including a proposal for locations of the ADA device integration for the Owner's review and approval. In such RFI, Developer was requesting clarification of the model or type of the phones (such as surface mounted or recessed within the wall).<sup>374</sup>

---

<sup>372</sup> Please see Attachment 428.

<sup>373</sup> Please see Attachment 429.

<sup>374</sup> Please see Attachment 429a.

This Change Directive may potentially impact the concessions area as the connections are located near concessions stores if the redesign including the ADA device could impact the concessions program, but final drawings have not been approved at this time. For the ADA devices located within the Developer's space, the operations, maintenance, and renewal on such devices will be performed by the Owner as per the terms of the Agreement. As stated in the Change Directive, the location of these devices will be coordinated between the Owner and Developer to mitigate any potential impact on the Concessions Program or O&M costs incurred by the Developer.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

**q. Change Directive 26 – Delete Access Control Rough-in and Change Door Hardware for three (3) CMF Doors**

Developer received Change Directive 26 on March 22, 2019 (the “**Change Directive**” or “**Change Directive 26**”).<sup>375</sup> March 22, 2019 – the day that the Change Directives were all supposed to be resolved, per the January 16 Tolling Agreement.

Change Directive 26 alters the type/configuration of six doors across the Central Monitoring Facility (the “CMF”) area, including card readers, panic bars, locksets, and cypher locks. This Change Directive affects the CMF in Level 3 MOD1 West area 5B impacting the disciplines of architectural, telecommunications and electrical.

Below is a graphic illustrating the key dates for Change Directive 26. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 26.

---

<sup>375</sup> Please see Attachment 90

**REDACTED**

Before the Change Directive was sent to the Developer, on March 22, 2019, one of Developer's sub-tier contractors, Gilmore Construction, raised a question to the Developer regarding the access control design for the CMF. According to information Gilmore received during a meeting with Servitech and the Owner for a different project, the current design for the CMF access control system did not meet TSA and Owner requirements.

An RFI (RFI-0348) was created by the Developer and sent to the Engineer of Record (EOR) to be reviewed and responded to. However, the responses provided by the EOR to these questions were still based on the current design and did not yet not address the TSA's and the Owner's new stipulations.

Seeking some additional information, the Developer approached the Owner. The Owner, at that point, told the Developer that the Owner's team was already working on putting together a Change Directive to have the Developer address the issue.

In order to streamline the efforts, a coordination meeting between the Owner, the Developer, and several of the Developer's contractors (GHB, SSR, Gilmore, IME and Servitech) was called for March 20, 2019. During this meeting every party involved was made aware of the intent that the modifications related to this Change Directive will follow. Minutes of that meeting are attached hereto.<sup>376</sup>

The Scope of Works of this Change Directive includes:

- *Door TML\_03\_8E\_CR01A CMF Entry – Replace Door Type 13AV (w/power supply) with Type 9C (with power supply) and card readers on both sides of door.*
- *Door TML\_03\_8E\_CR01B Corridor Emergency Exit – No lockset; Provide mechanical panic bar with alarm with 24-hour monitoring via a Door Position Switch. No access hardware from the unsecure sides of door and no card reader(s).*
- *Door TML\_03\_8E\_301 CMF Server/Comm Room – This shall remain as a Type 2B door with card readers on both sides.*
- *Door TML\_03\_8E\_302 TSA Control Room – Replace hardware with TSA cypher lock. Rough-in with conduit, cabling, and boxes per original plans.*
- *Door TML\_03\_8E\_303 BHS Room – Replace hardware with Owner's cypher lock. Rough-in with conduit, cabling, and boxes per original plans.*
- *Door TML\_03\_8E\_304 Room Behind Video Wall – This door will require access to be controlled as per current approved plans unless the Developer relocates the video server to within the CMF server/Comm room. If that occurs this door would not require access control and would only require an Owner cypher lock.*

---

<sup>376</sup> Please see Attachment 429.

On March 21, 2019, the Owner provided to the Developer with a brochure of the cypher lock and on April 8, 2019 the Owner confirmed that “The TSA cypher locks for the new CMF are the same as the DEN cypher locks”.

Several emails were exchanged between Developer and Owner to properly implement the Change Directive requirements.<sup>377</sup>

On April 19, 2019, Developer issued PCE awaiting further clarifications from the Owner that could have an impact to Developer’s cost analysis.<sup>378</sup>

On May 1, 2019 Developer requested Owner additional clarification regarding which option to pursue in order to finalize the PCE:

- To repurchase the CMF doors affected by the hardware change;
- Field modify the already purchased CMF doors to accommodate new hardware.

Owner responded on May 16, 2019 requesting Developer to formalize the above through an RFI.

On May 17, 2019, the Developer issued RFI-185 as per Owner request, and Owner responded stating that it is acceptable to void the STC rating/warranty of doors 302 and 303 in the CMF in order to avoid replacing installed frames and purchased doors. It is understood that the appearance will not be affected. The change in door hardware is the result of Change Directive 26.<sup>379</sup>

On May 29, 2019, Developer provided a revised PCE for Change Directive 26.<sup>380</sup>

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>377</sup> Please see Attachment 433.

<sup>378</sup> Id.

<sup>379</sup> Please see Attachment 434.

<sup>380</sup> Please see Attachment 433a.

**r. Change Directive 27 – Level 6 Ticketing Power and Data Cabling**

Developer received Change Directive 27 on March 15, 2019 (the “**Change Directive**” or “**Change Directive 27**”).<sup>381</sup>

Change Directive 27 directs the Developer to make two related Changes. First, Change Directive 27 directs the Developer to provide electrical and communications raceways for the kiosks equipment that deviated from the agreed scope of Work as a consequence of the limitations in the Level 6 topping slab depth that was thinner than was presented in Appendix 7-A Baseline Structural Documents of the Agreement. Second, this Change Directive also directed the Developer to change ticketing equipment kiosk locations in its design which deviated from the original scope of Work. This revised design requirement required the kiosks to be spread throughout the queuing areas within each POD (check-in islands) rather than as originally contemplated where all of the kiosks were located in the corner of each POD. The combination of these two changes had major implications on the design and also on the construction procedures for Phase 1 and Phase 2 of the Project.

This Change Directive was issued by the Owner during the late stages of the Developer’s design process and impacted design work that had already been permitted in November 2018. The changes required affect the electrical requirements for each kiosk position among the structure and perforations through the Level 6 slab.

Below is a graphic illustrating the key dates for Change Directive 27. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 27.

---

<sup>381</sup> Please see Attachment 88.

**REDACTED**

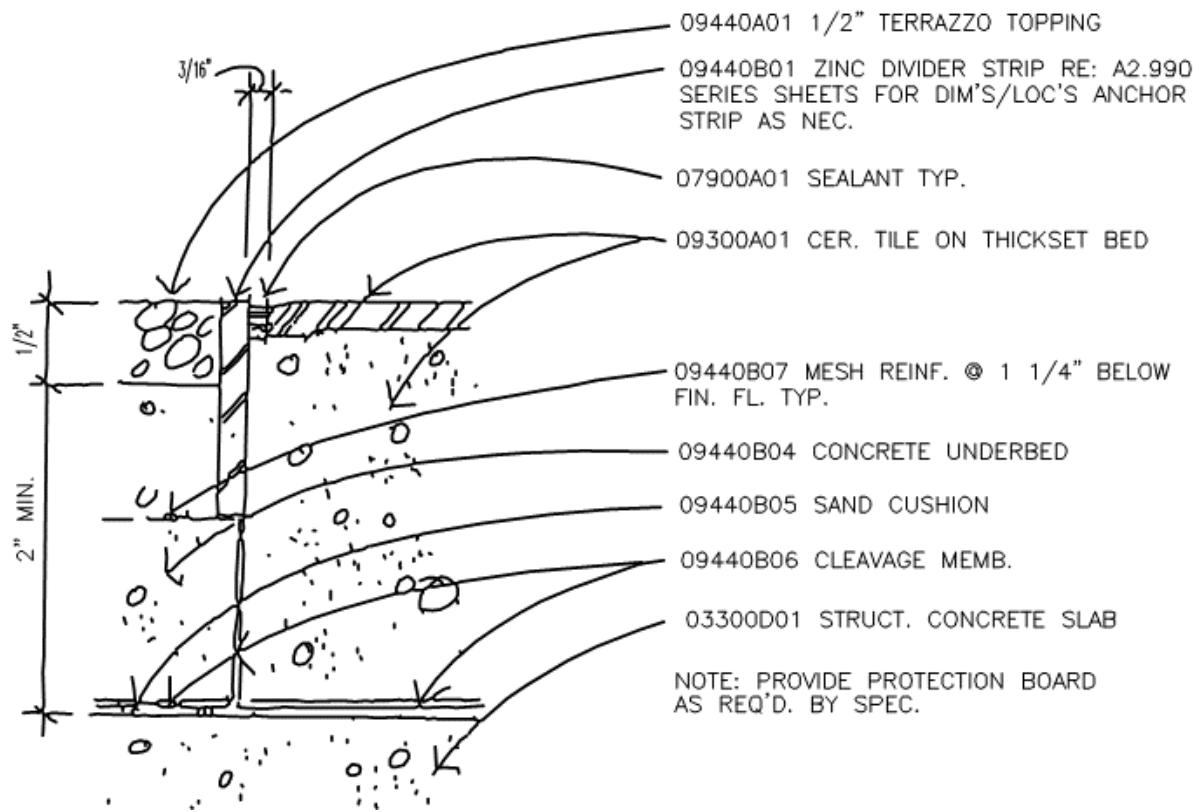
**REDACTED**

Appendix 1-C, Division 26 of the Technical Requirements of the Agreement always provided that the Developer would be required to install certain electrical and communications raceways. However, as can be seen in the following excerpt, it was contemplated that they would be installed within the current topping slab: “Electrical and communications raceways will be installed within the topping slab for floor outlets and connections in the open areas of Level 5 between Grids W2 and E2 and at the ticketing kiosks on Level 6, as allowed by the structural engineer. No other in-floor raceways are provided.”<sup>382</sup>

Appendix 7-A Baseline Structural Documents of the Agreement relatedly defined the topping slab to have a minimum depth of 2” with a ½” terrazzo topping, thus, making feasible the original required raceways. Please see below.

---

<sup>382</sup> Please see Attachment 435.



**Change Directive 27 – Architectural detail from the Appendix 7-A Baseline Structural Documents**

Finally, the original location for the check-in kiosks agreed in the Contract Documents was a single area in the corner of each POD as it shown above.

All these 3 facts are very important to understand the implications of Change Directive 27.

Prior to the Change Directive issuance on March 13, 2018, after a meeting between the Owner and the Airlines, the Owner delivered new location and count information for the Check-in/Bag Drop Counter Equipment and Kiosks deviating from the above described location for the kiosks.<sup>383</sup>

Subsequently, on March 23, 2018, the Owner sent the Developer another letter stating:

For the Kiosks, I [sic] have attached the current L6 Pod floor plan, which includes most of the airlines preferred kiosk layouts and quantities. This does not show all 224 kiosks identified in the program. The Kiosks shall no longer be located in the corners of the Ticketing Pod queueing area as shown in the DA and 30% Submittal. But rather within the proposed queue area in front of the Check-in/Bag Drop counters. The current queueing area shown at approx. 16 ft. wide is acceptable. However, it should now include two continues parallel in-floor walkerduct “gutters” (approx. 8 ft. apart) in front of all of the Check-in/Bag Drop counters [...].

As a follow up to the letter received from the Owner and after an analysis of the consequence, the Developer issued correspondence on April 30, 2018 requesting written confirmation of the Level 6 Ticketing Pod - Kiosk Layouts/Floor Plan along with confirmation from the Owner for other outstanding items not clearly defined or identified in the Owner’s letter.<sup>384</sup>

In addition, on May 03, 2018, Developer issued RFI-0029 to the Owner requesting specific details regarding kiosk locations, power and data requirements, and airline proprietary kiosks.<sup>385</sup>

The Owner answered RFI-0029 on May 15, 2018, confirming the new airline and common use kiosks location.<sup>386</sup> The Owner was also requesting flexibility in the area so the Airlines can relocate their kiosks according to their operational requirements. It is shown below the location for both kiosks configuration in POD G where the magnitude of the change can be easily identified:

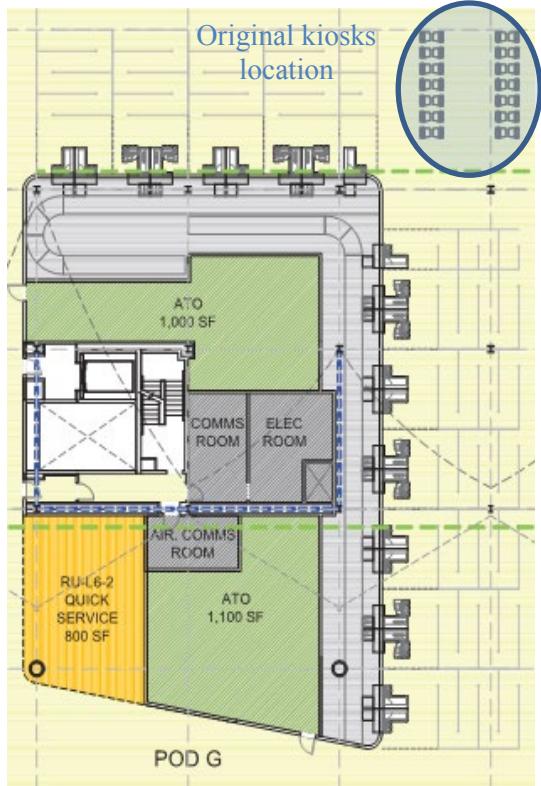
---

<sup>383</sup> Please see Attachment 436.

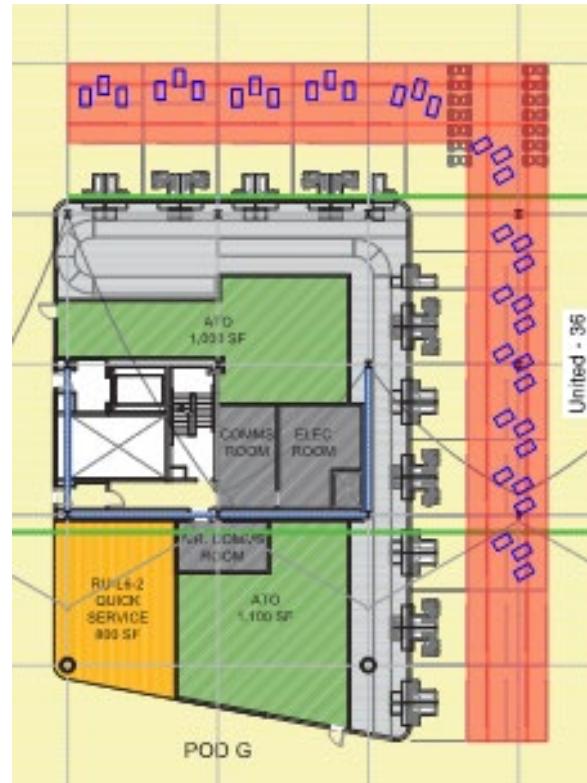
<sup>384</sup> Please see Attachment 436.

<sup>385</sup> Please see Attachment 437.

<sup>386</sup> Please see Attachment 437.



Development Agreement - Scope Exhibits



RFI-0029 – Owner response Exhibit

After the Owner answered RFI-0029, a revised version of the layout was provided by the Owner on May 16, 2018, which layout now included specifics about additional 4 remote Common Use Kiosk, not previously provided.<sup>387</sup>

As some information and clarifications were still needed, on May 18, 2018, Developer issued a revised RFI-0029<sup>388</sup> requesting further detailed information on the documents received from the Owner on May 16 about the distribution of the self-service kiosks in the Level 6 ticketing area.

The Developer needed the design of this area and the requirements to be frozen to progress with the design so on May 24, 2018, correspondence was issued by Developer setting forth the understanding that the layout received via response to RFI-0029 was the official and frozen layout<sup>389</sup>.

Between May 24, 2018 and August 16, 2018, the Developer completed and submitted the Combined Phase 1 IFC Submission to the City and to the Owner. This design package incorporated comments and clarifications associated with RFI-0029. The package was approved by the City on November 19, 2018.

To confirm the depths above, further verification with destructive tests was required. Once Developer had access to the site at the beginning of the demolition works in, several destructive tests were performed in PODs B and G in October 2018. The results of that survey showed that 80% of the tests had less than 2 ½" depth with differences of almost 2" in less than 4'. With such results, the walkerduct solution could not be implemented without impacting the whole height of the Level 6 floor.

For further confirmation about the design implemented and already permitted, the Developer worked together with the manufacturer, the structural Engineer of Record (EOR), the Architect of Record (AOR) and the electrical EOR in order to find a technical solution that could fit within that depth.

---

<sup>387</sup> Please see Attachment 438.

<sup>388</sup> Please see Attachment 439.

<sup>389</sup> Please see Attachment 440.

On November 14, 2018, Developer participated in a meeting with Owner to present the findings and analyze the raceways constraints within the topping slab as a consequence of testing and measuring the exiting floor depth along the new airline kiosk layouts.<sup>390</sup>

The results of that study were reflected in the document “Walkerduct Revision - Constructability Report” dated November 20, 2018.<sup>391</sup> The report shows that the solution was very tight, but it could work with a 2 ½ topping + terrazzo depth.

The Developer submitted on December 4, 2018 the Phase 2 100% Issued For Review (“IFR”) package to the Owner which design package set forth the locations for the remaining kiosks.

The Developer issued correspondence to the Owner on December 11, 2018, explaining that the changes of kiosks layouts and locations due to the Owner’s RFI-0029 response, and floor depths of less than 2 ½” were both contributing to prevent a Walker duct solution on Level 6.<sup>392</sup>

As a consequence of such correspondence, the Developer participated in a meeting with the Owner on December 19, 2018, to analyze the raceways constraints to be installed within the topping slab along the new airlines kiosks layouts and find a solution to the November 20, 2018 report results.<sup>393</sup>

A follow up meeting was held on January 09, 2019 to continue the discussion about different options and constraints.<sup>394</sup>

After the meetings with the Owner and as a consequence of the changes needed for the implementation of the new location of the kiosks, the depth of the topping slab and the lack of direction from the Owner, the Developer issued correspondence on February 04, 2019, as a follow-up to Developer’s previous correspondences dated as of December 11, 2018. In the February 04 letter, Developer requested an Owner Change for the electrical and communication raceways within the topping slab of the Project.<sup>395</sup>

Finally, on March 15, 2019, the Owner issued Change Directive 27.

---

<sup>390</sup> Please see Attachment 441

<sup>391</sup> Please see Attachment 443

<sup>392</sup> Please see Attachment 442

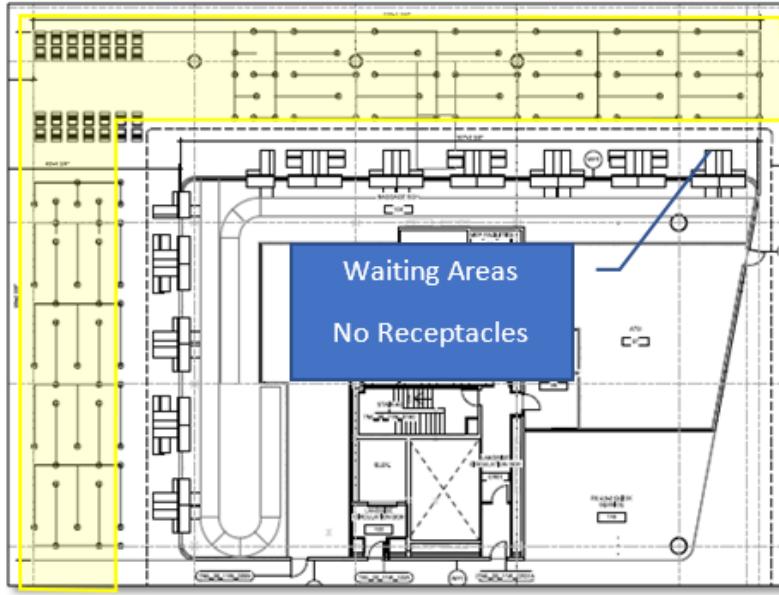
<sup>393</sup> Please see Attachment 444

<sup>394</sup> Please see Attachment 445

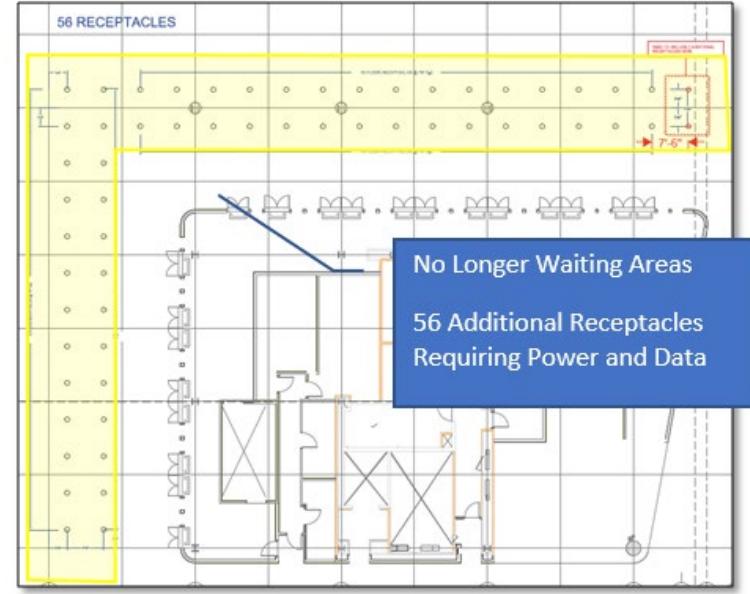
<sup>395</sup> Please see Attachment 446

This Change Directive stated: “The Owner is providing this letter [dated March 14, 2019] to clarify to the Developer, our expectation to meet the scope requirement of the “Electrical and Communication raceways...within the topping slab for floor outlets and connections in the open areas of...the ticketing kiosks on Level 6”, as defined in the DA Volume II – Technical Requirement Appendix 1-C – Basis of Cost Estimate Scope Clarification.” The Change Directive description continues to explain the Developer shall provide flush floor receptacles for power and data in the level 6 finished floor, “in an 8’ x 8’ grid pattern”.

The Change Directive explains the floor depth is insufficient to install electrical conduit within the floor thickness.



Development Agreement - Typical POD



Change Directive 27 - Revised POD

As most of the design work was already performed by the Developer based on previous requests from the Owner, a PCE was provided on March 22, 2019<sup>396</sup> including design and construction costs but excluding any cost associated with schedule impacts. Developer reserved the rights to revise the estimate upon completion of a final design that was pending final confirmation from the Owner for the proposed solution.

Resolution of the Change Directives was supposed to occur no later than March 22, 2019, per the January 16 Tolling Agreement. Resolution did not occur. The First Extension of Tolling Agreement was executed, extending resolution of the Change Directives until April 15, 2019. Resolution did not occur. The parties then executed the Second Extension of Tolling Agreement and Mediation Agreement.

As of the date hereof, this Change Directive has an impact in the design schedule and a critical impact on the construction schedule of 78 calendar days. Please see Attachments 4 and 4a. Please also see Attachment 3.

As FTI explains:

Change Directives 19 and 27 from DEN require [Developer] to install substantially more electrical, date and security scope than what was originally specified. In fact, [Developer's] pricing of Change Directives 19 and 27 accounts for a 266% increase in (original estimate of \$2,056,864 to revised estimate of \$5,480,537) scope for ticketing power and data cabling (including new electrical equipment and associated feeders, added power drops, telecommunication and data drops and BHS access control / cabinet changes). Due to these new requirements, the project schedule has been delayed. This has had a critical path impact of 78 calendar days in the construction schedule.<sup>397</sup>

---

<sup>396</sup> Please see Attachment 448, March 22, 2019, PCE for CD 27.

<sup>397</sup> Please see Attachment 3 at pp. 9-10. Please also see pp. 46-50.

**s. Change Directive 28 – Revised EDR 22 FF&E Requirements**

Developer received Change Directive 28 on March 25, 2019 (the “**Change Directive**” or “**Change Directive 28**”).<sup>398</sup>

Change Directive 28 was issued by the Owner “as a clarification to the FF&E requirements of the DA. The Owner directs the Developer to eliminate the portion of the Executive Design Review Element (EDR-22) design and procurement services for “FF&E (as related to public spaces [portions] only)”, from the Developer’s scope of work.

Change Directive 28 requires Developer to remove text from Appendix 1 – Scope Documents, Volume II - Technical Requirements. Specifically removing the following (bullets 1 and 2):

- all (FF&E) are considered included if shown in the FF&E table in the Scope Exhibits
- all public space FF&E within the O&M Limits as indicated in the Scope Exhibits, including public seating and power access for the public.

Below is a graphic illustrating the key dates for Change Directive 28. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 28.

---

<sup>398</sup> Please see Attachment 91.

**REDACTED**

**REDACTED**

**REDACTED**

The Change Directive then adds new Work Scope for the Public FF&E elements:

- “the following public FF&E elements shall be included;
  - Level 5 & 6: Non-Plaza Furniture (quantities and pricing provided by the Developer)
    - Inclass Two-Seater
    - Viccarbe Common Sofa
  - ATO, TSA, & AOB Back of House (BOH) office areas
    - To confirm the FF&E inventory, the Developer shall provide their final list of FF&E items and pricing to the Owner for approval
  - BOH DEN Stakeholder offices
    - To confirm the FF&E inventory, the Developer shall provide their final list of FF&E items and pricing to the Owner for approval
  - All power receptacles for proposed FOH FF&E location shall be included
  - All power and data receptacles for proposed BOH FF&E locations shall be included:”

Since most of the FOH FF&E scope is being removed from the Developer’s scope of work, it is not clear at this stage how the Owner intends to do this work and how it is going to affect the design and construction of the Project.

The Owner verbally stated in February 2019<sup>399</sup> that is planning to hire their own FF&E designer to address this work. No further information has been provided as of June 2019 regarding the Owner’s intentions for this change and when, who and how such work will be coordinated with the Developer’s Project.

The baseline contract scope for FF&E included all areas of the Terminal on Levels 5 and 6, and within the AOB expansion. The revised scope presented in Change Directive 28 deletes FF&E from the following Areas:

- Airside Plaza and Landside Plaza FF&E on Floor 5
- Floor 5 South Bridge Trellis
- Floor 5 Incubator Floor 6
- TSA Checkpoint Furniture.

Change Directive 28 inadvertently characterized the changes as affecting only Executive Design Review 22. EDR 22 is defined in Volume 1 of the Technical Requirements on page 23 as “22 FF&E (as related to public spaces only)” and is part of the Executive Design Review Process. The Process is a six-

---

<sup>399</sup> Please see Attachment 392, February 25, 2019, EDR Meeting Minutes.

step progression of information provided by Developer and presented to Owner, allowing Owner “to provide early input into alternatives for each EDR Area/Element”.

#### i. EDR History

Developer participated in at least sixteen (16) meetings related to this EDR between February 2018 and March 2019 for FF&E as related to public spaces. At each meeting, Developer presented color renderings featuring multiple styles, colors, and arrangements. Developer proceeded in good faith that the process and content was satisfactory to Owner, and that both Parties were working toward solutions to accommodate the Project Schedule.

Developer participated in three (3) EDR 22 meetings with the Owner on February 15, 2018; March 28, 2018; and May 2, 2018.<sup>400</sup> These meetings included discussions and PowerPoint slides to help the Owner provide “early input”. However, the Owner sought to utilize these and subsequent meetings to obtain a full and final design.

On June 15, 2018, Developer participated in another EDR 22 Workshop with the Owner.<sup>401</sup>

Developer provided an update including FOH (public area) FF&E such as Corian (solid surface) elements for the service pods and several sofas on July 19, 2018.<sup>402</sup>

Developer met with the Owner on September 11, 2018 to review FF&E pricing. On September 12, 2018, Developer provided the Owner with cost breakdown of the FF&E allowance.<sup>403</sup>

A meeting was held on September 21, 2018 to review Level 6 and Level 5 FF&E layouts for FOH.<sup>404</sup>

---

<sup>400</sup> Please see Attachments 451 and 451a.

<sup>401</sup> Please see Attachment 453.

<sup>402</sup> Please see Attachment 459.

<sup>403</sup> Please see Attachment 463.

<sup>404</sup> Please see Attachment 465.

On October 3, 2018, Developer provided a preliminary cost assessment to the Owner related to EDR 22 FF&E (as related to public spaces only).<sup>405</sup>

Meetings were held on October 12, 2018<sup>406</sup> and October 29, 2019<sup>407</sup> to discuss each of the FF&E items and understand the status of each item within the FF&E allowance (agreed/not agreed, approved/not approved, or partial decisions), decision making timescales in order to facilitate the overall Project Schedule, and next steps for each item. The latter meeting was also in preparation for a meeting to take place on November 8, 2018.

A meeting took place with the Owner on November 15, 2018 in Chicago, including a preparation walkthrough for this meeting also in Chicago on November 8, 2018, related to EDR 22.<sup>408</sup>

Developer participated in an EDR meeting on December 07, 2018, to recap the Chicago visit.<sup>409</sup>

Developer issued correspondence on January 11, 2019 confirming Developer is moving forward with the procurement of the furniture that will be part of the Phase 1 FOH FF&E design and procurement as a result of the previous EDR meetings on October 12, 2018, October 29, 2018, November 02, 2018, November 15, 2018 and December 07, 2018.<sup>410</sup> During the October and November meetings, Developer informed Owner that Phase 1 furniture selection was behind schedule for delivery by Phase 1 opening.

Developer participated in a meeting with the Owner on January 17, 2019.<sup>411</sup> Among other topics, Owner asked for information that was already provided, and Developer warned about Owner not providing necessary information:

- GHB informs that pricing has been already provided in EDR meetings.
- DEN to issue Change Order confirming products and quantities for Phase 1 for GHB to order the materials (EDR & Allowance).
- DEN (Tegan) to confirm timeline to finalize Level 6 millwork service pods. GHB states that this design has been currently on hold since November 2018 since DEN (Brett) is working on a design with DEN (Kim Day).

---

<sup>405</sup> Please see Attachment 466.

<sup>406</sup> Please see Attachment 467.

<sup>407</sup> Please see Attachment 468.

<sup>408</sup> Please see Attachments 470 and 470a

<sup>409</sup> Please see Attachment 471.

<sup>410</sup> Please see Attachment 472.

<sup>411</sup> Please see Attachment 473.

The Owner issued Change Directive 28 on March 25, 2019, converting the remaining FF&E items from the EDR to the Change Directive.<sup>412</sup> After all the efforts put in the development of the FF&E design, and the Owner inability to conclude and decide among the presented options, the Owner removed the design and procurement of most of FOH FF&E from Developer' scope. Developer is unaware of the progress of this design at this stage, and has not received any information from the Owner on this regard. This information is necessary to evaluate the integration with other disciplines and allow Developer's design to be finalized.

## **ii. Impacts to Developer**

Change Directive 28 inhibits Developer from fulfilling obligations in other parts of the Contract Document. In particular:

- Volume II – Technical Requirements, Appendix 1A - 1.2.6.1 Public Circulation and Conveyance
- Volume II – Technical Requirements, Appendix 1A - 1.2.6.2 Landside Plaza
- Volume II – Technical Requirements, Appendix 1A - 1.2.6.3 Airside Plaza
- Volume II – Technical Requirements, Appendix 1A - 1.2.6.4 International Arrival Plaza

In general, these sections require Developer to build and operate Concessions Spaces. Change Directive 28 removes the FF&E required for modern concessions spaces within an airport environment. Amenities like charging stations, bottle fills, trash and recycling receptacles, chairs, and tables are necessary elements to allow Developer to develop a quality concession experience as defined in the Concessions Development and Management Plan.

Change Directive 28 does not identify if Owner will provide the FF&E contemplated for the Plazas for successful concessions operations. Developer's experience and thoughtful consideration would conclude a significant reduction in revenues and damages to Developer's business plan and profitability.

---

<sup>412</sup> Please see Attachment 480.

Change Directive 28 suggests a potential financial credit to Owner will be handled at Project Substantial Completion. The likely credit would be aggregated with Allowance Items contemplated in 13.4.3 of the Agreement. The Owner's reconciliation is not one of the stated methods for Developer to refund funds as described in Article 12 of the Agreement.

Article 12 provides two methods: 1) Reduction to the Maximum Progress Payment Amount and 2) Direct Payment to Owner by Developer. Article 12 entitles selection of the method to Developer. A change to the Agreement is likely required if Owner requires Developer to use the refund method outlined in Article 13, specifically 13.4.3.

Developer is unable to provide a financial impact for Change Directive 28 until the Owner provides information regarding the Owner's intentions to provide the FF&E for the Plaza areas. Correspondence was issued on April 19, 2019, on this topic.<sup>413</sup>

After final FF&E has been selected by the Owner, the Developer will evaluate the potential impacts on the O&M Services and Concessions Program.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

---

<sup>413</sup> Please see Attachment 480a.

**t. Change Directive 29 – Eliminate EDR#20 Passenger Experience Elements**

Developer received Change Directive 29 on March 25, 2019 (the “**Change Directive**” or “**Change Directive 29**”).<sup>414</sup>

Change Directive 29 removed the “Passenger Experience Elements” from the Project scope of Work. These were located throughout the Terminal including both the landside and airside plazas.

This change requires re-evaluation of the structural, architectural, electrical, mechanical, and technology design. More to the point, this Change Directive at its core concerns a dispute between Owner and Developer concerning the credit that the Owner is owed as a result of this deductive Change Directive. In addition to the Direct Costs associated with the Passenger Experience Elements the Owner believes they are entitled to the Overhead Margin.

Below is a graphic illustrating the key dates for Change Directive 29. It generally begins with the date the Developer requested the Owner to issue a formal notice to document the Owner preferred change. It also shows the delay from the Owner in issuing its Change Directive and the time required for the parties to jointly discuss the scope of the change. As depicted in this graphic, the Owner introduced significant delay into the process of determining Change Directive 29.

---

<sup>414</sup> Please see Attachment 92.

**REDACTED**

**REDACTED**

EDR 20 is related to the Passenger Experience including the following five elements described in the Agreement - Appendix 1-B.4.<sup>415</sup>

Experiential Element	Description
<b>Media Ribbon Panels</b>	Approximately 8'-0 tall LED media panels with a maximum resolution of 6mm, located in the L5 Airside Plaza along the L6 slab edge in the North/South direction from Gridlines 18 to 24 E/W sides (LED panels not included at the E/W slab edges)
<b>Media Escalators</b>	Planar LO55-S (or similar) Transparent OLED 55" displays running in-between both sets of escalators from L6 to L5 Airside Plaza. OLED panels to be protected by 5'-0" tall glass screens on each side of all OLED panels.
<b>Interactive Play Area</b>	Brightlogic Active Floor (or similar) reactive flooring with 7.8mm LED panels and (2) video controllers for programming content. A 2'-0 rubber flooring border is included at the perimeter of the reactive flooring to accommodate any potential height differences in the finished floor elevations.
<b>Overhead Cloud Feature</b>	(5) helium-filled balloons made to look like clouds as provided by Airstage (or similar), including (2) docking stations and an autonomous cloud control system
<b>Iconic Sphere Element</b>	Steel sphere structure with a 13'-0 radius wrapped in media panels, suspended by two-steel arms cantilevered from the bridge.

Change Directive 29 started out as EDR 20, Passenger Experience Elements. Therefore, the background for this Change Directive requires an explanation of what happened first in the EDR 20 process.

The Developer followed the EDR Process as detailed by Section I.8.3.2 of the Technical Requirements (Volume II of the Development Agreement), presenting the Owner with the necessary designs and associated cost at various EDR meetings.

Per Section I.8.3.2 of the Technical Requirements (Volume II of the Development Agreement), EDR 20 should have been approved no later than the 60% Design Development package for the entire Project, which was submitted in April 2018. This did not occur, which resulted in the parties executing a waiver with respect to the 60% Design Development package.

This EDR was also required to be approved by the Owner within 15 days, also as required by Section I.8.3.2 of the Technical Requirements. As shown below, this EDR was not approved as required by the terms of the Development Agreement, including the aforementioned sections of the Technical Requirements (Volume II of the Development Agreement).

---

<sup>415</sup> Please see Attachment 49.

Since January 2018, a total of six EDR meetings were held with the Owner to present and discuss the five elements of the EDR: January 25, 2018 (Day 1)<sup>416</sup>; February 12, 2018 (Day 13)<sup>417</sup>; April 4, 2018 (Day 50)<sup>418</sup>; May 17, 2018 (Day 81)<sup>419</sup>; May 31, 2018 (Day 91)<sup>420</sup>; and June 11, 2018 (Day 98)<sup>421</sup>.

On December 5, 2018, Developer submitted the Phase 2 100% IFR package to the Owner.<sup>422</sup> And on December 21, 2018, Developer submitted the Phase 3 90% and the Phase 4 90% packages to the Owner.<sup>423</sup> Every drawing package until the Change Directive was received contemplated the inclusion of the Passenger Experience Elements.

The January 16 Tolling Agreement was executed, with resolution of the EDRs to occur by March 22, 2019.<sup>424</sup> After the date for resolution of the EDRs had passed, the Owner issued Change Directive 29 on March 25, 2019, converted this EDR into Change Directive 29.<sup>425</sup>

The First Extension of Tolling Agreement was executed, extending resolution of the Change Directives (including this former EDR and now Change Directive 29) to April 15, 2019. None of the Change Directives were resolved by April 15, 2019. The parties then executed the Second Extension of Tolling Agreement and Mediation Agreement.

On April 19, 2019, Developer provided a PCE for Change Directive 29.<sup>426</sup> As this Change Directive involves the removal of base scope, the issue prohibiting the approval of the Developer's PCE is the Owner's belief that in addition to the direct costs, the Owner is also entitled to the overhead markups associated with the base scope work. The total overhead of the project has been confirmed by the Owner in relation to pricing for other allowance items, specifically the Materna Units.

---

<sup>416</sup> Please see Attachment 481.

<sup>417</sup> Please see Attachment 482.

<sup>418</sup> Please see Attachment 483.

<sup>419</sup> Please see Attachments 484, 484a, 484b and 484c.

<sup>420</sup> Please see Attachment 485.

<sup>421</sup> Please see Attachment 486.

<sup>422</sup> Please see Attachment 386.

<sup>423</sup> Please see Attachment 388 and 388a.

<sup>424</sup> Please see Attachment 1.

<sup>425</sup> Please see Attachment 493.

<sup>426</sup> Please see Attachment 492.

In addition, the Concessions Program is impacted by this Change Directive because the passenger experience elements were a vital aspect to increase the customers' experience in the Terminal. While the negative impact of this change is impossible to calculate, the overall dwell time of passengers is likely to be impacted.

For the areas made available by the removal of the Passenger experience elements, new O&M Service areas could be created, in such event if these spaces are maintained by the Developer increased O&M Services and cost will need to be calculated. Additionally, the removal of the Passenger experience elements could impact the Concessions Program and Concessions Revenue through shorter dwell times of the passengers.

As of the date hereof, this Change Directive has an impact in the design schedule but does not have any critical impact on the construction schedule. See Veritas reports for total costs claimed and FTI report for impacts to the Project Schedule.

**(c) Identification of all pertinent documents and the substance of any oral communications, if any, relating to the Relief Event and the name of the person or persons making such material oral communications;**

Please see Attachments noted in the footnotes and body of this Relief Event Claim. Please also see Attachment 52 hereto, a matrix correlating the attached transmittals to Aconex transmittals to the Owner including meeting minutes with attendees and subject of the meeting.

In addition to these documents, Developer has discussed this Relief Event with various members of the Owner's team, as set forth herein, including but not limited to Kim Day, Cristal DeHerrera, Gisela Shanahan, Michael Sheehan, Larry Larson, Stuart Williams, and Jacquie Rainey.

**(d) Identification of the particular provisions of the Agreement that are claimed to entitle Developer to the compensation, time extension and/or other relief sought, and a statement that sets forth the reasons why such provisions entitle Developer to such compensation, time extension and/or other relief. If relevant to the Relief Event Claim, Developer shall identify the provisions of the Contract Documents which the Owner has allegedly failed to perform or observe and the actions constituting such failure;**

**General Legal Basis for Entitlement to Compensation**

As described in section (b) above, the Developer's Work has been materially disrupted and interfered with by the Owner's Changes, a Compensation Event (Type 1) (a), as set forth in Appendix 1 to the Agreement.

In accordance with and pursuant to the terms and conditions of Section 11.3.3 of the Agreement,<sup>427</sup> and taking into account the schedule delays for which Developer is entitled to relief pursuant to the terms and conditions of the Agreement as set forth and explained herein, in respect of this Relief Event Claim, the Developer is entitled to compensation for its Direct Costs, as determined in accordance with Appendix 11 of the Agreement,<sup>428</sup> compensation for delays in respect of Supplemental Payments and compensation for lost Concession Revenues. The legal basis for compensation for each of these categories is provided below.

---

<sup>427</sup> Please see Attachment 1 at pg. 78.

<sup>428</sup> Please see Attachment 7, Appendix 11 of the Agreement, Direct Costs.

### **Developer Entitlement to Time Extension**

Section 11.3.2.1 clause 2 of the Agreement provides that Developer shall be entitled to an extension of:

The Scheduled Developer TSA Screening Area Handover Date solely to the extent that a Relief Event Delay actually delays handover by Developer to the Owner of the TSA Screening Area in accordance with Section I.2.4 of the Technical Requirements beyond the then current Scheduled Developer TSA Screening Area Handover Date.<sup>429</sup>

As shown on Attachment 3 hereto, the TSA Screening Handover Date has been delayed by the Owner Changes Compensation Event, discussed herein, which Compensation Event, together with the Delayed Governmental Approvals Relief Event and the Unknown Structural Conditions Relief Event, results in a Relief Event Delay that extends the TSA Screening Area Handover Date on a day for day basis for 770 calendar days.

Section 11.3.2.1 clause 3 of the Agreement provides that Developer shall be entitled to an extension of the “applicable Scheduled Functional Area Readiness Date solely to the extent that a Relief Event Delay actually delays satisfaction of the conditions set forth in Section 5.9.2 beyond the then current Scheduled Functional Area Readiness Date.”<sup>430</sup>

As shown on Attachment 3 hereto, the Scheduled Functional Area Readiness Dates have been delayed by the Owner Changes Compensation Event, discussed herein, which Compensation Event results in a Relief Event Delay that extends the Functional Area Readiness Dates as per the below table:

---

<sup>429</sup> Please see Attachment 1 at pp. 77-78.

<sup>430</sup> Id.

Activity ID	Activity Name	Contract Dates	Finish	Total Float (Work Days)	Time Extension (Calendar Days)
13520	TSA Screening Area Handover	6/15/2020	7/25/2022	-553	-770
13220	FAR 1 - Phase 4 Lvl 6 Curbside West	11/3/2021	2/28/2024	-597	-847
13230	FAR 2 - Phase 4 Lvl 6 Curbside East	11/3/2021	2/28/2024	-597	-847
13240	FAR 3 - Phase 2 Airline Space MOD 3 West	1/30/2020	11/12/2021	-596	-652
13250	FAR 4 - Phase 2 Airline Space MOD 3 East	1/30/2020	11/12/2021	-596	-652
13260	FAR 5 - Airline Space Phase 1 MOD 2 West	5/1/2019	6/30/2020	-597	-426
13270	FAR 6 - Airline Space Phase 1 MOD 2 East	5/1/2019	6/30/2020	-597	-426
13280	FAR 7 - Phase 3 SSCP MOD 1 West	10/23/2020	2/6/2023	-597	-836
13290	FAR 8 - Phase 3 SSCP MOD 1 East	10/23/2020	2/6/2023	-597	-836
13300	FAR 9 - Phase 4 Vertical Transportation Lvl 6 - 5	11/3/2021	2/28/2024	-597	-847
13310	FAR 10 - Phase 4 Lvl 6 South Bridge	11/3/2021	2/28/2024	-597	-847
13320	FAR 11 - AOB Corridor	1/10/2020	6/9/2021	104	-516
13330	FAR 12 - Phase 4 Landside Plaza	11/3/2021	2/28/2024	-597	-847
13340	FAR 13 - Phase 4 Airside Plaza MOD 2 Center	11/3/2021	2/28/2024	-597	-847
13350	FAR 14 - Phase 4 Airside Plaza MOD 1 Center	11/3/2021	2/28/2024	-597	-847
13360	FAR 15 - Phase 4 Vertical Transport Lvl 5 - 4 MOD 1 & 2	11/3/2021	2/28/2024	-597	-847
13370	FAR 16 - Escalators Phase 1 Lvl 5 - 4 MOD 2 Center	5/1/2019	6/30/2020	-597	-426
13380	FAR 17 - Phase 1 Lvl 4 AGTS Area	5/1/2019	6/30/2020	-597	-426
13390	FAR 18 - Phase 4 Goods Delivery Facility	11/3/2021	2/28/2024	-597	-847
13400	FAR 19 - Phase 1 CMF	5/1/2019	6/22/2020	-517	-418
13391	FAR 20 - AOB SSCP Renovation	11/4/2021	2/29/2024	-597	-847
13410	Project Substantial Completion	11/4/2021	2/29/2024	-597	-847
13430	Project Final Acceptance	11/4/2021	2/29/2024	-597	-847

Section 11.3.2.1 clause 4 provides that Developer shall be entitled to an extension of:

The Scheduled Project Substantial Completion Date and a corresponding extension of the Project Substantial Completion Long Stop Date solely to the extent that a Relief Event Delay actually delays Project Substantial Completion beyond the then current Scheduled Project Substantial Completion Date [...]<sup>431</sup>

As shown on Attachment 3 hereto, the Scheduled Project Substantial Completion Date and the Project Substantial Completion Long Stop Date have been delayed by the cumulative schedule impacts of Delayed Governmental Approvals Delay Event, Unknown Structural Conditions Compensation Event, and Owner Changes Compensation Event, discussed herein, which Relief Events combined result in a Relief Event Delay that extends these dates on a day for day basis for 847 calendar days of which 386 calendar days are the incremental impact of the Owner Changes Compensation Event.

---

<sup>431</sup> Id.

Section 11.3.2.1 clause 5 of the Agreement provides that the Developer is entitled to an extension of the “Project Final Acceptance Deadline solely to the extent that a Relief Event Delay actually delays Project Final Acceptance beyond the then current Project Final Acceptance Deadline.”<sup>432</sup>

As shown in Attachment 3 hereto, the Project Final Acceptance Deadline has been delayed by the cumulative schedule impacts of Delayed Governmental Approvals Delay Event, Unknown Structural Conditions, and this Owner Changes Compensation Event, discussed herein, which Compensation Event results in a Relief Event Delay that extends these dates on a day for day basis for 847 calendar days of which 386 calendar days are the incremental impact of the Owner Changes Compensation Event.

#### **Developer Entitlement to Direct Costs**

Section 11.3.3.1 clause 1 of the Agreement provides that “Developer shall be entitled to compensation for Direct Costs incurred by Developer or its Contractors, as determined in accordance with Appendix 11, in respect of an occurrence of any Compensation Event other than Compensation Event (Type 3).”<sup>433</sup> As explained above, the claims presented in this Relief Event Claim are defined in the Agreement as a Compensation Event (Type 1) (a). As such, Developer is entitled to compensation for its Direct Costs in respect of the occurrence of the Owner Changes Compensation Event in accordance with Appendix 11 of the Agreement (which total \$136,151,072 for this Owner Changes Compensation Event only and \$225,453,015 for the cumulative entitlement of the Unknown Structural Conditions Compensation Event, and this Owner Changes Compensation Event). A breakdown of the Direct Costs to which Developer is entitled to compensation in accordance with Appendix 11 of the Agreement are set forth in section (f) below and also shown in Attachments 4 and 4a hereto, Reports of Veritas Advisory Group, Inc.

#### **Developer Entitlement to Supplemental Payments**

Section 11.3.3.1 clause 2 of the Agreement provides:

To the extent that a Compensation Event Delay extends the Scheduled Project Substantial Completion Date beyond the Baseline Project Substantial Completion Date and actually

---

<sup>432</sup> Id.

<sup>433</sup> Please see Attachment 1 at pg. 78.

delays receipt by Developer of Supplemental Payments beyond the Baseline Project Substantial Completion Date, Developer shall be entitled to compensation in accordance with Section 11.4.1.”<sup>434</sup>

Building off of such general rule, Section 11.4.1.1 clauses 1 through 3 of the Agreement<sup>435</sup> sets forth that Developer shall be entitled to compensation for corresponding delays in receipt of Supplemental Payments in an amount equal to:

(1)The amount of Supplemental Payments that would have been paid (assuming no Performance Deductions) to Developer during the period commencing on the Baseline Project Substantial Completion Date and ending on the Scheduled Project Substantial Completion Date, prorated for the number of days of Compensation Event Delays; minus (2) Avoidable O&M Costs; minus (3) The proceeds received by Developer from any delayed state up insurance policy procured to cover any delay in receipt of Supplemental Payments during the period commencing on the Baseline Project Substantial Completion Date and ending on the Scheduled Project Substantial Completion Date, prorated for the number of days of Compensation Event Delays.

The Developer has calculated the amount of Supplemental Payment that would have been paid during the delay period considering that the monthly Loss of Supplemental Payment is calculated using the Base Monthly Supplemental Payment as defined in Section 2.2 of the Agreement:

BM<sub>n</sub> = Base Monthly Supplemental Payment amount for Month (n):

$$BM_n = \frac{MASP_y}{12} \times F$$

MASP<sub>y</sub> = Maximum Annual Supplemental Payment for Fiscal Year (y); as defined in Section 2.1 of the DA

F = Supplemental Payment Step Up Factor which shall be calculated as follows:

F = dr<sub>n</sub> / dm<sub>n</sub>

Where:

dr<sub>n</sub> =

- (1) Total number of days in Month (n); or
- (2) If Project Substantial Completion occurs part way through a Month, the number of days remaining in Month (n) as at the Project Substantial Completion Date; or
- (3) If the Termination Date does not occur on the last day of a Month, the number of days from the beginning of the Month up to and including the Termination Date.

dm<sub>n</sub> = Total number of days in Month (n)

---

<sup>434</sup> Please see Attachment 1 at pg. 79.

<sup>435</sup> Please see Attachment 1 at pg. 80.

The current MASP included in the Initial Financial Model is \$22,496,000 in 2016 Real Prices starting on December 1, 2021.

Pursuant to Section 13.3.1.1 of the Agreement,<sup>436</sup> Supplemental Payments become due and payable by the Owner to the Developer commencing on the Project Substantial Completion date until the Termination Date. As demonstrated in Attachment 3, the cumulative schedule impacts of the Delayed Governmental Approvals Delay Event, the Unknown Structural Conditions Compensation Event, and this Owner Changes Compensation Event Delay set forth herein for the Relief Event described herein extends the Scheduled Project Substantial Completion Date beyond the Baseline Project Substantial Completion Date to February 29, 2024, a cumulative delay of 847 calendar days, of which 386 calendar days are the incremental impact of this Owner Changes Compensation Event only.. The Developer is entitled to compensation of \$27,977,301 for as a result of this Owner Changes Compensation Event only and \$57,923,810 for the Unknown Structural Conditions Compensation Event, and this Owner Changes Compensation Event as a result of delays in receipt of Supplemental Payments.

In respect of Avoidable O&M Costs, per Appendix 1 of the Agreement such items are defined as, “*Avoidable O&M Costs means, in connection with a Relief Event, any operation and maintenance expenses and other amounts that Developer may avoid through the exercise of reasonable diligence and would otherwise have incurred during the relevant period had the Relief Event not occurred.*” The Developer has total Avoidable O&M Costs attributable to the Unknown Structural Conditions Compensation Event and this Compensation Event of \$133,581 related to avoided rental for office space and utility payments. There are no other Avoidable O&M Costs attributable to the Unknown Structural Conditions Compensation Event and this Compensation Event.

---

<sup>436</sup> Please see Attachment 1 at pg. 88.

### **Developer Entitlement to Lost Concessions Revenues**

Section 11.3.3.1 clause 3 (a) of the Agreement<sup>437</sup> provides:

To the extent that a Compensation Event Delay in respect of a Compensation Event (Type 1) delays the Scheduled Functional Area Readiness Date of a Concessions Functional Area beyond the applicable Baseline Functional Area Readiness Date, and actually delays earning of Developer Concessions Revenue beyond the applicable Baseline Functional Area Readiness Date, Developer shall be entitled to compensation in accordance with Sections 11.4.2.1 through 11.4.2.3 and Section 11.4.2.6.

Section 11.4.2.1 clauses (1) through (3) of the Agreement<sup>438</sup> provide:

Developer shall be entitled to compensation in an amount equal to 1. (a) with respect to a Compensation Event (Type 1), the Adjustment Base Case Developer Concessions Revenue of each Affected Concession [...] aggregate for all Affected Concessions and prorated for the applicable number of days of Compensation Event Delays; minus 2. Avoidable O&M Costs; minus 3. The proceeds received by Developer from any business interruption insurance policy procured to cover any loss of Concessions Revenue during such period.

Pursuant to Section 6.1.2.1 of the Agreement,<sup>439</sup> the Developer is entitled to the Developer's Lost Commercial Revenues. As demonstrated in Attachment 3, the Compensation Event Delay set forth herein for the Relief Event described herein delays the Scheduled Functional Area Readiness Date of each Concessions Functional Area beyond the applicable Baseline Functional Area Readiness Date and, as demonstrated below, actually delays earning of Concessions Revenue beyond the Baseline Functional Area Readiness Date. The Developer is entitled to compensation of \$2,543,144 for this Owner Changes Compensation Event only and \$5,204,351 for the Unknown Structural Conditions Compensation Event, and this Owner Changes Compensation Event combined, as a result of lost Concessions Revenues.

As is noted above, in respect of Avoidable O&M Costs, per Appendix 1 of the Agreement such items are defined as, "*Avoidable O&M Costs means, in connection with a Relief Event, any operation and maintenance expenses and other amounts that Developer may avoid through the*

---

<sup>437</sup> Please see Attachment 1 at pg. 78.

<sup>438</sup> Id. at pg. 81.

<sup>439</sup> Id. at pg. 52.

*exercise of reasonable diligence and would otherwise have incurred during the relevant period had the Relief Event not occurred.*" The Developer has total Avoidable O&M Costs attributable to the Unknown Structural Conditions Compensation Event and this Compensation Event of \$357,234 related to avoided rental for office space and utility payments,. There are no other Avoidable O&M Costs attributable to the Unknown Structural Conditions Compensation Event and this Compensation Event.

- (e) If Developer requests a time extension, Delay Costs and/or compensation under Section 11.4 of the Agreement, a detailed analysis of the Relief Event Delay, including its impact on the Project Schedule and the number of days by which Developer's ability to meet any applicable Completion Deadline has been delayed and if compensation is sought under Section 11.4 of the Agreement, any impact of the Relief Event Delay on: (1) the Project Debt draw down schedule (if applicable), funding and release of reserves, financing costs and debt service profile (including debt interest payments due and accrual of interest); and (2) the Committed Equity Investment draw down schedule, Developer's dividend profile and Equity IRR, in each case to the minimum extent required for Developer to avoid breaching its minimum debt covenants under the Funding Agreements as a result of the Relief Event Delay while maximizing Equity IRR, taking into account the compensation sought under Section 11.4 of the Agreement;**

Please see Attachment 3, Report of FTI Consulting, Inc., which is hereby reasserted and incorporated, as if set forth fully herein. Please also see section (b), above.

As addressed in FTI's Report, as part of its forensic schedule analysis it determined that there were no concurrent delays that would offset these compensable days of delay.

Per Section 11.4.1.3 of the Agreement, compensation owed to the Developer for delayed Supplemental Payments shall be paid to the Developer monthly beginning on the "*last day of the month immediately following the month when Project Substantial Completion would have been achieved had the Compensation Event Delays not occurred*" and continuing until "*all compensation owed under Section 11.4.1.1 is paid*." Prior to this Relief Event, Project Substantial Completion would have been achieved on November 4, 2021. Per Section 11.4.1.3, the Owner will begin making payments to the Developer on January 31, 2022.

Per Section 11.4.2.6 of the Agreement, compensation owed to the Developer for lost Concessions Revenue shall be paid to the Developer in "*monthly in arrears*." Prior to this Relief Event, the Developer

would begin receiving Commercial Revenues on May 1, 2019 . Per Section 11.4.2.6, the Owner will begin making payments to the Developer on June 1, 2019 for the amounts then invoiced.

Per Section 11.5.1 of the Agreement, compensation owed to the Developer for any additional compensation due to a Compensation Event: “*(a) as periodic payments over the Term; (b) as an adjustment to the MASP over the Term; (c) as progress payments invoiced as Work is completed; (d) as an up-front lump sum payment; or (e) through any combination of the above, as determined by the Owner in its sole discretion.*”

For illustration purposes only, the Developer is demonstrating the impacts of this Relief Event in the Financial Model assuming that the Owner elects to compensate the Developer for its Direct Costs attributable to this Relief Event using options (a) periodic payments from the Scheduled Project Substantial Completion Date through the remainder of Term to compensate the Direct Costs that are attributable to the schedule impact, and (c) as progress payments invoiced over the Project Construction Period for the D&C Direct Costs related to the actual implementation of the Change Directives (excluding schedule impact). As per Section 11.6.1 of the Agreement, if the Owner elects to compensate the Developer for all or a portion of its Direct Costs utilizing method (a), periodic payments over the Term, the Developer is entitled to additional compensation as necessary to maintain the Equity IRR and debt service coverage ratios in the Financial Model as a result of such election.

In order to finance the Direct Costs that are subject to such deferred payments, the Financial Model assumes an incremental injection of equity by the shareholders (as described in greater detail below) in order to provide the Developer with a source of funding to pay for such Direct Costs until it subsequently receives the periodic payments from the Owner. Such assumption was used for illustration purposes only and does not constitute an offer or a commitment by the Developer or its shareholders to provide any such additional equity (and is subject in all respects to review and approval by the shareholders and the Developer should the Parties agree to pursue this course of action). Any such commitment or agreement to provide additional equity will be made at the sole and absolute discretion of the shareholders of the Developer, if

made, and is subject in all respects to the approval of the investment committees of each of the shareholders as well as to any other approvals that may be required by the Developer and/or its shareholders.

In the following set of tables, provided for illustration purposes only, Developer has sets forth the noted financial impacts taking into account (i) the cumulative schedule relief entitlement of the Developer as a result of the Delayed Governmental Approvals Relief Event, the Unknown Structural Conditions Compensation Event, and this Owner Changes Compensation Event, and (ii) the Developer's monetary entitlement as a result of the Unknown Structural Conditions Compensation Event, and this Owner Changes Compensation Event, each of (i) and (ii) as set forth more precisely in (a) above.

Additionally, the following tables, which are provided for illustration purposes only, take into account the following assumptions:

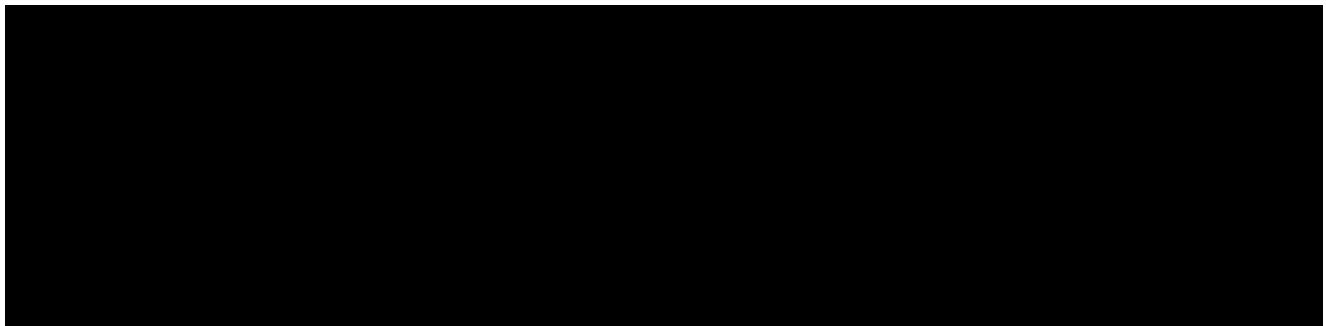
- a. The payment of Direct Costs claimed related to this Relief Event resulting from the schedule delay shall be deferred until the Scheduled Project Substantial Completion Date (such deferred payments, the "Relief Event Deferred Payments"). The Developer is showing, for illustration purposes only, an injection of additional equity in an amount of \$ [REDACTED] into the Project during the Project Construction Period as a result of the assumed Relief Event Deferred Payments. The Developer is assuming the following conditions among others for the purpose of this illustration that the Initial Equity IRR (Financial Close) is used for rebalancing purposes as per Section 11.6.1 of the Agreement the Developer is entitled to additional compensation as necessary to maintain the Equity IRR and debt service coverage ratios in the Financial Model as a result of such election; and
- b. It is assumed in this scenario that there would be payment of the Direct Costs incurred as a result of the D&C Work during the Project Construction Period to resolve this Relief Event per Appendix 11 of the Agreement which will total \$33,429,548.
- c. It is also assumed that the Relief Event Deferred Payments would be paid during the Project Operating Period (c. 334 months) by the Owner to the Developer on monthly basis with fixed payments indexed at 2.5% annually per the Financial Model. Such amount per year under this scenario would be \$ [REDACTED] (in 2016 Real Prices).

Based on the schedule and monetary relief to which the Developer is entitled as set forth in (a) above, please see below the impact in this illustrative example of the cumulative effect of the Delayed Governmental Approvals Relief Event, the Unknown Structural Conditions Compensation Event and this

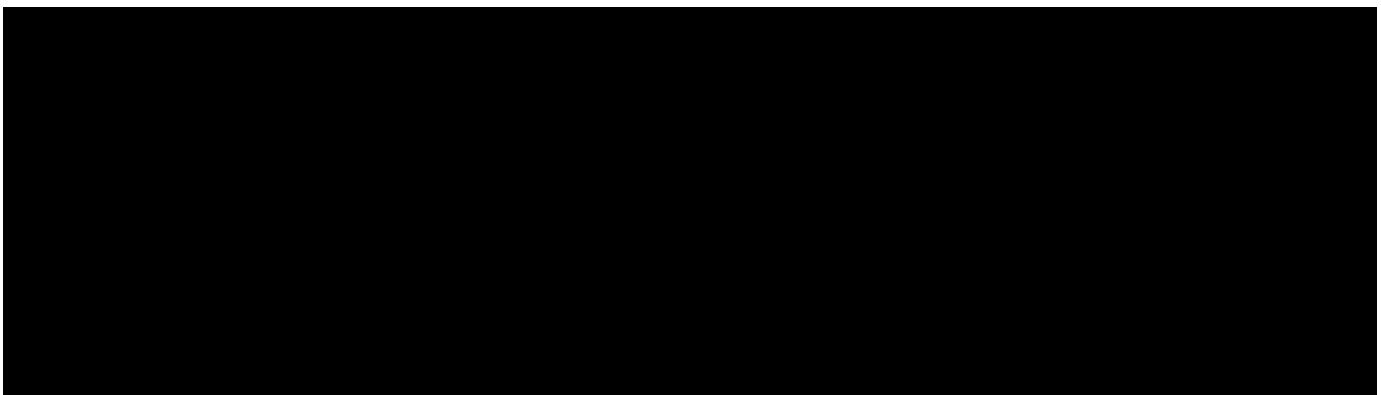
Compensation Event Delay on (1) the Project Debt draw down schedule (if applicable), funding and release of reserves, financing costs and debt service profile (including debt interest payments due and accrual of interest); and (2) the Committed Equity Investment draw down schedule, Developer's dividend profile and Equity IRR, in each case to the minimum extent required for Developer to avoid breaching its minimum debt covenants under the Funding Agreements as a result of the Relief Event Delay while maximizing Equity IRR, taking into account the compensation sought under Section 11.4 of the Agreement.

Below you can find a summary of the impact of the above:

- Project Debt draw down schedule. Impacted by the estimated level of construction progress during the noted periods.



- Funding and release of reserves. This Relief Event would slightly impact the funding and release of reserves.
  - o Debt Service Reserve Sub-Account: would vary depending on the Scheduled Project Substantial Completion as shall be necessary so that the available funds are at least equal to the Debt Service Required Balance as set forth and defined in the Financing Documents.



- Major Maintenance Reserve Account: would vary due to the impact of this Relief Event Claim so that the available funds are at least equal to the Major Maintenance Reserve Required Balance as set forth and defined in the Financing Documents.

- Financing costs and debt service profile (including debt interest payments due and accrual of interest) would not be impacted by the Relief Event Claim as the same are fixed, scheduled obligations that the Developer needs to meet based on timing set forth in the Financing Documents.
- Committed Equity Investment draw down schedule. The Letter of Credit (“LOC”) would remain open for an extended duration as a result of this Relief Event. Further, the potential additional equity, if contributed, may require an additional LOC. The costs associated with the extended duration and the additional LOC would be included in the deferred compensation (\$ [REDACTED]).



- Pursuant to Section 11.6.1, the Owner shall compensate the Developer for amounts necessary to maintain the Equity IRR and debt service ratios.

**(f) If the Relief Event Claim is in respect of a Compensation Event, a detailed, itemized estimate of all amounts claimed under Sections 11.3.3 and 11.4 of the Agreement, broken down into the Direct Costs identified in Appendix 11 of the Agreement, if applicable;**

Please see Attachments 4 and 4a, Reports of Veritas Advisory Group, Inc., which are hereby reasserted and incorporated, as if set forth fully herein. Please also see section (a), above. Developer is requesting \$166,671,517 as a result of this Owner Changes Compensation Event and \$288,090,361 as a result of the Unknown Structural Conditions Compensation Event, and this Owner Changes Compensation

Event as explained below and as further opened and tied to the contractual requirements of Appendix 11 of the Agreement in each of the Reports of Veritas Advisory Group, Inc.

**a) Contractor Direct Costs (including Developer's Mark-up).**

**Owner Changes Compensation Event**

\$	Base Direct Costs		Mark-up		<b>Total</b>
	Qualifying	Excluded	Contractor	Developer	
Direct Labor	27,056,354		3,246,762	811,691	<b>31,114,807</b>
Direct Material, Supplies, Installed Equipment	12,889,572		1,546,749	386,687	<b>14,823,008</b>
Equipment Costs	4,173,133		500,776	125,194	<b>4,799,102</b>
Professional Design Services	21,221,444		2,546,573	636,643	<b>24,404,661</b>
Bonds, Insurance, Permits and Taxes		2,568,672	-	-	<b>2,568,672</b>
Delay Costs		30,335,179	-	-	<b>30,335,179</b>
Quality Assurance	68,821		8,259	2,065	<b>79,145</b>
Travel and Subsistence		58,882	-	-	<b>58,882</b>
Competitive Tender		7,218,039	-	-	<b>7,218,039</b>
<b>Total</b>	<b>65,409,324</b>	<b>40,180,772</b>	<b>7,849,119</b>	<b>1,962,280</b>	<b>115,401,495</b>

**Unknown Structural Conditions Compensation Event, and Owner Changes Compensation Event**

\$	Base Direct Costs		Mark-up		<b>Total</b>
	Qualifying	Excluded	Contractor	Developer	
Direct Labor	37,740,525	-	4,528,863	1,132,216	<b>43,401,604</b>
Direct Material, Supplies, Installed Equipment	14,475,402	-	1,737,048	434,262	<b>16,646,713</b>
Equipment Costs	4,948,741	-	593,849	148,462	<b>5,691,052</b>
Professional Design Services	24,850,524	-	2,982,063	745,516	<b>28,578,103</b>
Bonds, Insurance, Permits and Taxes	-	7,799,950	-	-	<b>7,799,950</b>
Delay Costs	-	75,832,694	-	-	<b>75,832,694</b>
Quality Assurance	383,328	-	45,999	11,500	<b>440,827</b>
Travel and Subsistence	-	327,966	-	-	<b>327,966</b>
Competitive Tender	-	15,165,363	-	-	<b>15,165,363</b>
<b>Total</b>	<b>82,398,520</b>	<b>99,125,973</b>	<b>9,887,822</b>	<b>2,471,956</b>	<b>193,884,272</b>

**b) Developer Direct Costs. Owner Changes Compensation Event**

\$	Base Direct Costs		Mark-up		<b>Total</b>
	Qualifying	Excluded	Contractor	Developer	
Direct Labor	2,967,525		-	356,103	<b>3,323,628</b>
Labor Burden	652,000		-	78,240	<b>730,239</b>
Direct Material, Supplies, Installed Equipment	118,167		-	14,180	<b>132,347</b>
Professional Design Services	276,417		-	33,170	<b>309,587</b>
Bonds, Insurance, Permits and Taxes		9,477,514	-	-	<b>9,477,514</b>
Net O&M Costs	6,050,234		-	726,028	<b>6,776,262</b>
<b>Total</b>	<b>10,064,342</b>	<b>9,477,514</b>	<b>-</b>	<b>1,207,721</b>	<b>20,749,577</b>

### **Unknown Structural Conditions Compensation Event, and Owner Changes Compensation Event**

\$000s	Base Direct Costs		Mark-up		<b>Total</b>
	Qualifying	Excluded	Contractor	Developer	
Direct Labor	6,162,770			739,532	<b>6,902,302</b>
Labor Burden	1,350,896			162,108	<b>1,513,004</b>
Direct Material, Supplies, Installed Equipment	244,834			29,380	<b>274,214</b>
Professional Design Services	276,417			33,170	<b>309,587</b>
Bonds, Insurance, Permits and Taxes		15,793,375		-	<b>15,793,375</b>
Net O&M Costs	6,050,234			726,028	<b>6,776,262</b>
<b>Total</b>	<b>14,085,151</b>	<b>15,793,375</b>	-	<b>1,690,218</b>	<b>31,568,744</b>

#### **c) Loss of Revenues**

##### **Owner Changes Compensation Event**

\$	Supplemental Payments	Commercial Revenues	Avoidable O&M	Total
Loss of Revenues	27,977,301	2,543,144		30,520,445
<b>Total</b>	<b>27,977,301</b>	<b>2,543,144</b>	<b>0</b>	<b>30,520,445</b>

### **Unknown Structural Conditions Compensation Event, and Owner Changes Compensation Event**

\$000s	Supplemental Payments	Commercial Revenues	Avoidable O&M	Total
Loss of Revenues	57,923,810	5,204,351	-490,815	62,637,345
<b>Total</b>	<b>57,923,810</b>	<b>5,204,351</b>	<b>-490,815</b>	<b>62,637,345</b>

- (g) If Developer requests relief under Section 11.3.1 of the Agreement, the effect of the Relief Event on Developer's ability to perform any of its obligations under the Contract Documents that would otherwise result in accrual of Noncompliance Point(s), Noncompliance Instances, assessment of monetary deductions under Appendix 10 of the Agreement, or occurrence of a Developer Default, in each case including details of the relevant obligations, the effect on each such obligation, the likely duration of that effect and the specific relief sought;**

Pursuant to Section 8.1 of the Agreement,<sup>440</sup> “Noncompliance Points are a system to measure Developer performance levels during the Concessions operations and O&M phases of the Project.” Developer has not commenced the Concessions operations and O&M phases of the Project, and this Relief Event is expected to be resolved prior to this commencement. As such, the Developer has not requested relief under Section 11.3.1 of the Agreement as Noncompliance Points, Noncompliance Instances, and

<sup>440</sup> Please see Attachment 1 at pg. 58.

assessments of monetary deductions under Appendix 10 of the Agreement are not currently being applied pursuant to the terms and conditions of the Agreement.

**(h) An explanation of the measures that Developer has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay and other consequences of the Relief Event; and**

In addition to the mitigation efforts discussed herein, and in compliance with Developer's contractual obligation to "take all steps necessary on a commercially reasonable basis to mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice,"<sup>441</sup> the Developer entered into the Combined Phase 1 IFC mitigation agreement in August 2018 to mitigate against the delays that were beginning to be experienced on the Project as a result of the Owner Changes. Developer submitted the necessary modified drawings incorporating all of the Owner Change on June 4, 2019, which is less than two (2) months after the design for all disciplines was "frozen" on April 15, 2019.

The subcontractors working for the Developer began working at risk on the production of the shop drawings immediately after the modified drawings were released on June 4, 2019. Subcontractors were requested to do this in an effort to mitigate the delays attributable to these Owner Changes.

In addition, the procurement of some key components of the MEP installation will proceed at risk as has been overlapped with the approval of the deferred submittal to mitigate delays. The fabrication and delivery of key components of the MEP installation has also been overlapped with the procurement activities. All this considered, the Developer is assuming that it will only take two (2) weeks from the approval of the deferred submittal to the start of the MEP works on site.

Developer will continue to work collaboratively with the City to facilitate as reduced a review and permitting time as possible. However, Developer's ability to implement additional mitigation measures is becoming increasingly more difficult as construction progress. As Owner knows, work space within the

---

<sup>441</sup> Id. at pg. 76. Emphasis added. Note that Owner is also required pursuant to this same section of the Agreement to reimburse Developer for any Direct Costs incurred by Developer in complying with its mitigation responsibilities.

active airport is extremely limited, making changes by the Owner more challenging. Developer has repeatedly requested and proposed alternatives to mitigate the impact of these Change Directives, including but not limited to resequencing certain activities, provision of additional laydown space, receiving more advanced warning concerning train schedules, and additional lane shutdowns so it can deliver more material. Owner has either rejected or not responded to these numerous requests.

Making matters worse, the Owner has seen a remarkable increase in passenger volume. According to published data, the Denver International Airport has seen over the past year an increase of 5.1 % of passenger traffic<sup>442</sup>. While a positive for the Owner, this only makes an already restricted area even more constrained, with the numerous contractors at site scrambling for ever-increasingly limited space to perform their work. Developer's ability to mitigate Owner delays are becoming more unrealistic as the volume of passengers and construction work increases.

As it stands, the delay caused by the Change Directives to Developer's design is likely not able to be mitigated against. Those delays are, unfortunately, already set, as it was not until June 4, 2019, that Developer was able to submit its Modified Drawings to the City for permitting. Mitigation may be possible in future construction activities, but the extent of any such mitigation hinges upon the constraints placed upon Developer by Owner.

In respect of the Developer's O&M Services and its concessions program, the Developer has implemented a variety of mitigation efforts. First, the Developer has delayed entrance into its O&M Services Contract for the Project. On February 15, 2019, the Developer provided the Owner with an execution version of the O&M Services Contract that the Developer was ready to execute with its preferred Lead O&M Contractor to provide O&M Services for the Project for 30 years. In order to minimize the impact on the cost structure of the Project, the Developer has delayed executing such contract (which has

---

<sup>442</sup> Please see Attachment 95.

already been approved by the Owner per the terms of the Agreement) in order to avoid incurring O&M Costs (including mobilization payments that would otherwise be due and payable).

The Developer entered into its sub-concession agreements for the Phase 1 concessions. Given the Compensation Event Delays, the Developer has been proactively negotiating with such concessionaires in order to attempt to maintain such executed sub-concession agreements in place. By maintaining such agreements in place (rather than terminating the same due to the delay), the Developer believes that it will be able to more quickly open such concessions in the future once the applicable white boxes are available.

For all sub-concession agreements other than those for Phase 1, the Developer has rescheduled the RFP procurement process to delay the same thereby reducing the Project Costs associated with such procurement.

**(i) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.**

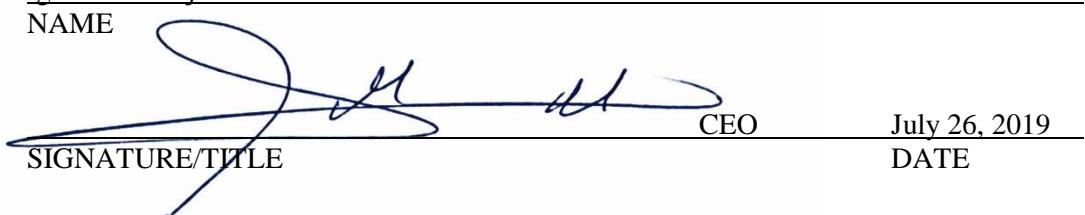
Neither Developer nor any Developer-Related Entity has collected or anticipates collecting any amounts in respect of this Compensation Event under any Developer-provided Insurance Policy, any Owner-Provided Insurance Policy, any self-insurance or otherwise.

(Developer's Certification of Relief Event Claim #18 – Owner Changes)

The Developer's Authorized Representative hereby certifies that the supporting documents and information attached hereto are accurate, truthful and complete.

Ignacio Castejon

NAME

A handwritten signature in blue ink, appearing to read "I. Castejon".

\_\_\_\_\_  
CEO

July 26, 2019

DATE

SIGNATURE/TITLE